

THE BCCI AFFAIR

HEARING
BEFORE THE
SUBCOMMITTEE ON
TERRORISM, NARCOTICS, AND INTERNATIONAL
OPERATIONS
OF THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
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C O N T E N T S

MAY 14, 1992

MORNING SESSION

Lehtinen, Dexter, Former U.S. Attorney, Southern District of Miami, FL.....	Page 3
Mattingly, James Virgil, Jr., General Counsel, Board of Governors of the Federal Reserve System.....	143
Prepared statement	144
Stone, John W., Chief of Enforcement, Federal Deposit Insurance Corporation	155
Prepared statement	158

AFTERNOON SESSION

Bruton, James, Acting Assistant Attorney General, Tax Division, Department of Justice	841
Davis, George, President and CEO, First American Bankshares, Washington, DC.....	173
Katzenbach, Nicholas, Chairman, First American Bankshares, Washington, DC.....	172
Prepared statement	173
Sayegh, Ahmed Al, Director, National Abu Dhabi Oil Company.....	743
Prepared statement	746
Smouha, Brian, Court Appointed Fiduciary for BCCI Holdings (Luxembourg) SA and Bank of Credit and Commerce International, S.A., London, England	322
Prepared statement	325

APPENDIX

Deposition of Edward M. Rogers, Jr.....	931
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OVERSIGHT ON BCCI AND COOPERATION UNDER THE PLEA AGREEMENTS

THURSDAY, MAY 14, 1992

U.S. SENATE,
SUBCOMMITTEE ON TERRORISM, NARCOTICS, AND
INTERNATIONAL OPERATIONS
OF THE COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee convened, pursuant to notice, at 9:10 a.m., in room SH-216, Hart Senate Office Building, Hon. John F. Kerry (chairman of the subcommittee) presiding.

Present: Senators Kerry and Brown.

Senator KERRY. The hearing will come to order.

Yesterday, the Justice Department announced a 100-count indictment against former CenTrust chief David Paul and today we are going to hear from the individual who began the investigation into David Paul and the S&L that he ran, CenTrust. We will also hear from a number of other people who will shed new light on the BCCI affair, both on the preinvestigative stage or the preindictment stage as well as in the settlement stage.

Many people still do not realize is that CenTrust at the time of its failure may have been controlled by BCCI. Indeed, in July of 1991 the Federal Reserve at the time that it levied its \$200-million civil fine determined that BCCI in fact had legal control over CenTrust.

Our first witness today, Mr. Dexter Lehtinen, is the former United States Attorney for the Southern District of Florida, and he may not have been aware at the time that he began this investigation that BCCI in fact controlled CenTrust, but he did understand that the institutions were inextricably linked, and we will hear this morning about his knowledge at that point in time, his perceptions of the case, the efforts that he undertook in order to try to investigate it.

Months before BCCI was closed down internationally, Mr. Lehtinen recognized that the key documents that would expose BCCI's control of United States institutions lay outside of the United States, and accordingly he set out to try to secure those documents.

He launched a major investigation of BCCI and also of its secret control of CenTrust and First American. He assigned the top investigators in his office to that investigation, and today in his testimony he will set forth to us exactly what he undertook to do at that point in time to pursue these cases and what happened in the course of his investigation.

We will then hear from Virgil Mattingly, who has appeared before this committee representing the Federal Reserve, and also John Stone of the FDIC, and they will share with us the status of their investigation into BCCI-related matters and particularly the future of the First American Bank.

I would note that Mr. Stone's written statement today quantifies for the very first time the loss to the Federal Deposit Insurance Fund associated with BCCI and the Independence Bank. The failure of the Independence Bank as a result of BCCI's management and control is estimated today to be in the vicinity of \$130 to \$140 million, and that obviously puts a lie to the often-quoted statement that BCCI has not cost the American taxpayers any money.

We will also be asking Mr. Mattingly about the cooperation of BCCI's liquidators and the BCCI majority shareholders—and that is the Government of Abu Dhabi—with the ongoing investigators' efforts into BCCI.

This afternoon, we will hear testimony from Nicholas Katzenbach and George Davis concerning their plans for the strengthening and selling of First American in order to free it completely from its entanglement with BCCI and the BCCI nominees.

That testimony will be followed by the appearance of Mr. Brian Smouha, who is the global liquidator for BCCI, and who is testifying for the first time in the United States concerning BCCI's affairs, and we are very grateful to him for taking the time to do that.

A key question we will ask of Mr. Smouha will be his assessment of who committed BCCI's frauds and whether the shareholders of BCCI were either dupes or participants in BCCI's improprieties.

Finally, we will hear this afternoon the testimony of Mr. Ahmed Al-Sayegh, who is a resident of Abu Dhabi and who was appointed last fall to the steering committee in Abu Dhabi responsible for overseeing the Abu Dhabi government's efforts to resolve what happened in the BCCI affair. Mr. Al-Sayegh is accompanied by Mr. Ron Liebman, who represents Abu Dhabi in the United States, and he will address the role of Abu Dhabi in the BCCI affair and the failure to date to make key documents and witnesses available to the Justice Department as well as to the Manhattan district attorney.

A little over a year ago, this committee began the public series of hearings. These hearings have ranged from the scope of BCCI's involvement abroad to its ownership of First American to how U.S. regulators and law enforcement have responded to this problem.

We have learned a great deal, but we would be the first to admit that this is something of an iceberg. There is still a substantial portion of the iceberg that is submerged, there remains, clearly, investigative work to be done. It is the hope of the committee, however, to be wrapping up its oversight efforts here with the knowledge that both the Manhattan district attorney and the Justice Department, both of whom have grand juries and subpoena power, are doing their work and that the legislative oversight process and investigative role may in fact be reaching its own natural conclusion.

I have been very fortunate in this effort to work with Senator Brown, who has brought some good insights and tough perspective to the process, and on a personal level I think he and I have had a

terrific time working together and have enjoyed our own relationship in doing so, and I would be delighted now to turn over to any opening statement you might have.

Senator BROWN. Mr. Chairman, I have nothing to add other than to simply say that I think it is appropriate for us to move ahead with a further look at the problems that developed in this case with regard to prosecution of the matter.

Again, our purpose is to find areas where we can improve the process and I think this line of inquiry is going to be very helpful to us in reviewing that process as well as putting some light on what particular problems develop along the way.

Senator KERRY. Let me emphasize that clearly the hearing today is looking at a number of different areas, some of which are related, some of which are not, and we recognize the amount of territory we are trying to cover. It is just regrettably necessary because of the schedule of the committee and the schedule of the Congress at this point, but I think that it can be done in an orderly and sensible way.

Mr. Lehtinen, I would like to ask you to stand so I could swear you in. [Witness sworn.]

Senator KERRY. If you could identify yourself for the record, please.

TESTIMONY OF DEXTER LEHTINEN, FORMER U.S. ATTORNEY, MIAMI SOUTHERN DISTRICT OF FL; ACCOMPANIED BY THOMAS TEW

Mr. LEHTINEN. Dexter Lehtinen, L-e-h-t-i-n-e-n, from Miami, FL.

Senator KERRY. And your current occupation.

Mr. LEHTINEN. Attorney.

Senator KERRY. Practicing privately.

Mr. LEHTINEN. Yes, a member of the Florida Bar and the California Bar.

Senator KERRY. You served as U.S. attorney for the southern district, is that correct?

Mr. LEHTINEN. Yes.

Senator KERRY. When did you serve in that role?

Mr. LEHTINEN. From June 1988 as the Attorney General's appointee and October 1988 as the court's appointee until January 1992.

Senator KERRY. Would you share with us for a moment a little bit of your background. Are you a native of Florida?

Mr. LEHTINEN. I was born in Florida in Homestead, south of Miami, and attended the University of Miami, Columbia University for a master's degree in political science and an MBA and after Vietnam Stanford University Law School.

Senator KERRY. You served in the United States Army in Vietnam?

Mr. LEHTINEN. Yes.

Senator KERRY. You were released from service in what year?

Mr. LEHTINEN. 1972.

Senator KERRY. And you are a decorated veteran of that war?

Mr. LEHTINEN. I served in the war, yes.

Senator KERRY. Now, with respect to your service as a U.S. attorney, would you share with the committee those cases that you deem to have been the more significant cases that came through your office?

Mr. LEHTINEN. Well, the Noriega case was already indicted. That was a case of national significance. BCCI and the CenTrust were investigated. The investigations began in my tenure. They were of national significance.

We filed a major lawsuit for protection of the Everglades from unwanted pollution which was described by the chief judge as the most important case ever filed in the Southern District of Florida, notwithstanding the Noriega or other cases.

Those are some of the major cases that we had. We indicted five present or former judges and three mayors and several councilmen of various cities.

Senator KERRY. Would you say in your own judgment that the BCCI case was to you one of the most important cases you were pursuing?

Mr. LEHTINEN. It was certainly one of the most important investigations and then indicted and dealt with by plea agreement in late 1991.

Senator KERRY. When did you first come into contact with BCCI?

Mr. LEHTINEN. In the course of the Central or Middle District of Florida, usually called Tampa, dealing with a case that they had made, there were discussions with our office and with me about our relationship to the disposition of the Tampa case, or a Tampa plea agreement.

Senator KERRY. So let's put this in perspective. Tampa already had indictments against BCCI, is that accurate?

Mr. LEHTINEN. Yes.

Senator KERRY. And those indictments were for money laundering.

Mr. LEHTINEN. They were generally for money laundering, yes, though it was—the characterization of the case later became an issue when—how you characterize the case for double jeopardy purposes was an issue, but it's always been called a money laundering case, but it had some tax implications.

Senator KERRY. What year was this?

Mr. LEHTINEN. It's early 1990, when they're discussing with us the disposition of the case in Tampa. I believe they indicted in 1988, if I'm not correct—late 1988.

Senator KERRY. When did you begin any kind of investigative effort within your office with respect to BCCI?

Mr. LEHTINEN. Well, the assistants looking at various miscellaneous allegations did so in late 1989, early 1990, and developed the theory that BCCI could be attacked from a tax viewpoint, from a tax approach.

After the money laundering plea in Tampa it was generally thought that money laundering investigations would be severely restricted by that plea. Not illegitimately, necessarily, but simply that Tampa had done money laundering and transactions that occurred in the Southern District of Florida in or around the same time would be barred from further money laundering prosecution and probably correctly so interpreted.

Senator KERRY. Now, I want to try to understand this so that somebody following it who is not as versed in it has a sense of what is happening.

In 1988 you say there was a case within the Tampa U.S. Attorney's Office known as the Middle District?

Mr. LEHTINEN. That's right.

Senator KERRY. And that case alleged that BCCI in Miami had been involved in money laundering.

Mr. LEHTINEN. Many of the transactions of the Tampa case occurred in the southern district rather than the middle district, but some occurred in the middle district and that district handled it because they had the investigative lead to begin with.

Senator KERRY. And at that point in time your office had no specific case against BCCI.

Mr. LEHTINEN. That's right. We had no indictment and no well-developed investigation, either.

Senator KERRY. But because the bank was within your jurisdiction and because you had information from your investigators about other possible lines of attack you believed that a further case, further action, could be brought against the bank, is that correct?

Mr. LEHTINEN. That's correct. The southern district both before and after the Tampa plea particularly believed that a tax indictment might be appropriate.

Senator KERRY. What did you do in your capacity as U.S. attorney in furtherance of that objective?

Mr. LEHTINEN. Well, in early 1990, when the plea discussions arise, I indicate to my assistants that at their questioning do we want to be part of the Tampa plea agreement? That is to say, identified, bound by, give up certain rights.

Senator KERRY. Again, let's be clear here. You're investigating, at which point Tampa contacts you, is that correct?

Mr. LEHTINEN. That's correct, or contacted—as Assistant U.S. Attorney, when you use me, or you, if you mean the district, yes, contacts our district.

Senator KERRY. And Tampa contacts your district to entreat you to join in their plea agreement, is that correct?

Mr. LEHTINEN. That is the impression I had. The assistant came to me. The assistant said, do we want to join in the Tampa plea agreement? They would like us to join in it. The bank would like us to join in it and pursue it to that discussion.

I decided we would not join in it, that it should be communicated back we did not want to participate in the Tampa plea agreement.

Senator KERRY. What arguments were put to you as to why you should be interested in joining in the plea agreement?

Mr. LEHTINEN. Well, in the normal course of events the defendant and perhaps another district as well, in order to—the district to induce the defendant to plead, the defendant in order to gain a benefit from a plea agreement, would want as much of the Government estopped or barred from prosecuting again as possible. That is a normal consideration.

The southern district might join in it if it did not think it had a viable case in the future or if it saw a law enforcement benefit. In this particular case, we saw no benefit to the Government by our

participation. We didn't make any judgment about Tampa's plea. That was their business, and we did not proffer on that, but we chose not to participate.

Senator KERRY. And you chose not to participate because it was your belief that there was significant investigative prosecutorial work yet to be done that you wanted to pursue, is that accurate?

Mr. LEHTINEN. Absolutely. A consideration was, do we have a chance of making a case, and if we made a case, would it be different, would it be barred by double jeopardy, because if the only case we could make is just the same money laundering allegations we could not make it anyway by law, constitutional prohibition, but our conclusion was that we had a chance for a separate, viable case, a tax case that was not double jeopardy barred or otherwise affected and that we should go forward with it and not give it up.

Senator KERRY. Did you inform the Tampa office of your intention to so proceed?

Mr. LEHTINEN. Yes. Our office did, or I am sure they did at my direction and later confirmed to me that they did.

Senator KERRY. What was your understanding at that point in time of your ability to proceed forward, given the nature of the plea agreement that was struck in Tampa?

Mr. LEHTINEN. That we, if we avoided the duplicitous money laundering charges, that we could go forward, that we would not be—a tax plea—correction, a tax charge was viable and could go forward.

Senator KERRY. So at that time you continued to investigate the possibility of bringing a tax case against BCCI.

Mr. LEHTINEN. That's correct.

Senator KERRY. Were you aggressive about that? Were you excited about it?

Mr. LEHTINEN. The assistants were aggressive and moved forward and issued subpoenas. They issued subpoenas to BCCI, subpoenas were issued to BCCI both by prosecutors directly interested or responsible for the BCCI case, and by prosecutors responsible for the related investigation of CenTrust Savings & Loan. CenTrust was alleged to have some relationships to BCCI, and so we had two teams who would issue what you would call BCCI subpoenas. One team would issue BCCI subpoenas on behalf of its CenTrust investigation, one would issue BCCI subpoenas on behalf of its BCCI investigation. Both did so in somewhat fruitless efforts to get records from the bank that were held overseas over the next year.

Senator KERRY. Now, when did you first learn of the potential connection between CenTrust and BCCI?

Mr. LEHTINEN. To tell you the truth, Senator, I cannot remember the first time that was discussed. The Assistant U.S. Attorneys, in the course of working the case, start to develop suspicions, beliefs, and so forth. It would be hard to identify when they thought that was possible.

But by 1990, those assistants are coordinating with each other. They're from the same section of the office, the economic crimes division. They work together. They understand they have conceptually separate responsibilities, but these are not two unrelated investigations. They know each other, they coordinate their subpoenas, they think there's a link.

Senator KERRY. Now following the plea agreement in Tampa at the same time as you were beginning to proceed forward and investigate, the regulators then considered whether or not BCCI's Florida banking license ought to be revoked. Did the Tampa office contact your office to inquire whether or not you would join them in supporting the continuing operations of BCCI?

Mr. LEHTINEN. My—the Assistant U.S. Attorney involved in the matter indicated that Tampa wanted to know our position with respect to BCCI's license, and that BCCI's lawyers, Holland & Knight, wanted to know our—or to put it more precisely my position. That they wanted to know Dexter's position is what the Assistant U.S. Attorney said.

And so I communicated it to her to tell both groups that we were of the opinion that a license should be in jeopardy if we made a successful prosecution. That we weren't sure what the state of the law would be. That Congress was interested in restricting banks' abilities to continue to operate once they were convicted of certain crimes, depending on what the law was at the time, and also depending—not to be technical, but depending upon its retroactive activity, whether it applied to offenses that were committed thereafter or earlier.

But setting all those complications aside, I said subject to all of those legal questions, if we do a successful prosecution and it falls within any area in which our recommendation is relevant to what should happen, that we would recommend they lose their license.

Senator KERRY. The time of the inquiry from the Tampa office was subsequent to the plea, correct? They had already plead guilty.

Mr. LEHTINEN. It is possible that such questions were raised between assistants before the plea. It is possible that they were raised. It's possible they were raised after the plea was agreed to but before it was entered. My recollection generally, however, is that these discussions are after the plea. I can't be precise. The plea is kind of—it is not a one time thing, it is an ongoing process.

Senator KERRY. Do you recall whether or not it was after the time that the plea had been announced publicly?

Mr. LEHTINEN. I was certainly asked that after it was announced publicly. Whether I was asked it before it was announced publicly, I can't swear to. But I certainly had that question asked to me several times and I was certainly asked it after it was announced publicly.

Senator KERRY. And after it was announced publicly, you were aware that there was significant criticism from the Congress from a number of Members, myself included, with respect to the plea.

Mr. LEHTINEN. Yes. But my recollection is that these discussions were before there was any significant congressional objection. But, yes, I recall that there was substantial publicity about criticism of the plea, but our discussions and communications occurred before any of that.

Senator KERRY. As the U.S. attorney in the southern district, did you understand that plea agreement to prohibit you from bringing a money laundering case in the southern district?

Mr. LEHTINEN. My assistants told me that generally money laundering would be difficult to make in the Southern District of Florida because of the plea. Very difficult because most of anything we

knew about money laundering separately would fall within the scope of a conspiracy, a double-jeopardy concept. But that tax charges or other matters, that we could successfully bring those because they would be barred.

Senator KERRY. But, in essence, the plea agreement had the effect, from your experience in this case, of deterring or restricting you from bringing a money laundering or similar type of case.

Mr. LEHTINEN. That was considered to be the practical effect. Phrases like—the discussion would ensue that, well, we can't do money laundering now, the Assistant U.S. Attorney would say, but we can do tax.

Senator KERRY. What strategy did your office then employ to try to build the case against BCCI with respect to the tax theory?

Mr. LEHTINEN. Well the assistants, both in CenTrust and BCCI—

Senator KERRY. How many people were working on this now?

Mr. LEHTINEN. I don't have an exact recollection at the time, but it was not just one. On each of those matters there were multiple assistants assigned to the matters. I don't recall, as we increased them, what the numbers were then.

Senator KERRY. Was it a priority?

Mr. LEHTINEN. It was an important matter and it was a priority matter.

Senator KERRY. And what strategy did you pursue specifically?

Mr. LEHTINEN. This was a records intensive case. They always said if they could not get records—you know, that this whole case rested on records. So they were aggressive, attempting to get records through grand jury subpoenas. And particularly the BCCI case, the assistant in charge articulated the belief that if customers of the bank could be successfully prosecuted, either they may initially cooperate and provide information about BCCI's conspiratorial activities, or even if they didn't initially cooperate, they might do so after they were convicted.

But they had to have records and they had to go after customers on the BCCI side to develop evidence. So they developed the strategy of indicting: some of whom were charged under seal and remain under seal, some of whom who were later charged publicly because they did not cooperate and remain to be tried.

Senator KERRY. So the key, to you, was getting documents.

Mr. LEHTINEN. The key was documents and, if it could be done, flipping customers.

Senator KERRY. The key to getting the documents was a series of subpoenas that you issued.

Mr. LEHTINEN. They issued numerous grand jury subpoenas to BCCI and fought, so to speak, with the bank's lawyers and made efforts to enforce the subpoenas.

Senator KERRY. The subpoenas you issued were issued in January 1991.

Mr. LEHTINEN. There were subpoenas issued, a number of them in January 1991. Some had been issued in '90, of course. But the assistants—both of them, CenTrust and BCCI, last name Sullivan on CenTrust and Rivera on BCCI—came to me in early 1991 and said that they would have no success with the bank on any of the

strategies that have been used, and that they had to go to the judge to compel enforcement of subpoenas.

To do that, they had to first get my permission. And we studied the issue and wanted the subpoenas compelled. And to the extent that the subpoenas—we wanted BCCI to produce records that were held both in the United States and overseas. It would require departmental permission to get a compulsion order from a judge on those subpoenas.

Senator KERRY. So the bank resisted.

Mr. LEHTINEN. Absolutely.

Senator KERRY. And would not honor the subpoenas.

Mr. LEHTINEN. Absolutely not. It would not honor them.

Senator KERRY. And you had two top assistants at this point, Andreas Rivera and Alan Sullivan, correct?

Mr. LEHTINEN. That's correct.

Senator KERRY. And they were two of your top assistants, were they not?

Mr. LEHTINEN. Yes.

Senator KERRY. Both assigned to this investigation.

Mr. LEHTINEN. One to CenTrust and one to BCCI.

Senator KERRY. And the two investigations, CenTrust and BCCI, were linked and proceeding along a dual track.

Mr. LEHTINEN. Yes. They would often come together to my office, the two of them together.

Senator KERRY. Do you recall how many subpoenas were outstanding at that point in time?

Mr. LEHTINEN. Actually, there were—quite a number of subpoenas would be outstanding. But when the assistants came to me to go to an enforcement strategy, a compulsion strategy through the judge, there were probably seven or eight or nine in direct issue at the time. I remember that Rivera, on BCCI, had six that were of great concern to him. And that was BCCI alone and Sullivan had others; so it would add to seven, eight, nine, or ten, something like that.

Senator KERRY. Some of those subpoenas related to foreign jurisdictions.

Mr. LEHTINEN. Yes. Well what the subpoenas actually do—and since those are, I would believe, probably still under a form of 6(e) confidentially, I would simply say that the form of all of those subpoenas would be to ask for a specific type of reference. Sometimes it would be on a named customer, that would be one subpoena. Sometimes it would generic types of records from the bank on accounting methods or personnel records; that would be another type.

The subpoenas do not identify countries per se. They say all records that you, BCCI, have regarding the following, and then there's a list of documents. The response from the bank was we can't give you a lot of those documents; they're in Panama, they're in Switzerland, they're in the United Kingdom. Our response was we want them anyway, you have a legal obligation.

So it would be discussed as the bank won't turn over foreign records, though the subpoenas never mentioned foreign countries. They say all records and the bank says you can't have them because they're in Abu Dhabi or Panama or Switzerland or France.

Senator KERRY. So, therefore, you sought to compel compliance with those subpoenas, did you not?

Mr. LEHTINEN. Yes. The form of compulsion the assistants proposed was since the bank refuses to turn over those records that they claim are in foreign jurisdictions, that we go to the judge and get a compulsion order on each foreign jurisdiction that we think they might be.

Now we didn't know exactly where they were, but the assistants listed the countries that they, for one reason or another, thought would have the record. And as I recall, they were United Kingdom, France, Holland, Luxembourg, Switzerland, Panama, United Arab Emirates, and the Bahamas and Grand Caiman. That's where the assistants thought they might have the records. So we proposed to go to the judge and say—the judge to issue a compulsion order to BCCI which would literally say in black and white, BCCI must honor subpoena number such and such for all records in France and the UK and so on.

Senator KERRY. Were you aware, at that point in time, that this subcommittee also had subpoenas on documents from BCCI?

Mr. LEHTINEN. I was not until I reviewed a—the requests were made orally to the department for this permission, but were also made in writing on March 26. And the letters which I approved—I read and approved because of the really important and sensitive nature of these matters.

Senator KERRY. Let us be clear here. You then sought authorization from main Justice in Washington through the Office of International Affairs, correct?

Mr. LEHTINEN. That's correct. They're the agency that provides that. And I was alluding to letters that we wrote.

But in direct answer to your question, in one of the letters the assistant refers to and says that one of the reasons for the urgency is that we have learned in the course of the investigation, particularly the Tampa investigation, that BCCI's legal counsel directed BCCI officials not to honor the U.S. Senate's subpoenas. And that was the only way that I knew, frankly, that the United States Senate ever issued any subpoenas. Because the assistants say, yes, in the course of the investigation it's clear legal counsel has—

Senator KERRY. But the picture that you now have is of the U.S. Senate committee attempting to get information from this bank and the bank stonewalling a Senate committee at the same time as they are stonewalling the United States Attorney. Is that accurate?

Mr. LEHTINEN. Our letters did argue to the Justice Department that Senate subpoenas were being evaded. It argued that the bank was evading its subpoenas, that it had destroyed records in New York, that it was hiding records, that one official had had his records purged, and that they were doing everything to evade and that they were going to leave the country. And that it was our belief they were going to leave and take the records, and therefore we wanted to go as quickly to the judge—we proposed April 5, 1991, that we actually be in front of the judge by that date.

Senator KERRY. It is fair to say, then, with the list of things that you have set out that were in your correspondence to Justice, that you were pleading a case of urgency for your need to get this information and have these subpoenas enforced.

Mr. LEHTINEN. Yes. The assistants, Sullivan and Rivera, signed those letters. I read them and approved them, but I remember Sullivan writing that this investigation simply cannot go forward in the grand jury if we don't take enforcement action; that this is our last chance, our last opportunity; but for this enforcement action, we will lose the opportunity to obtain records; and saying language like that. Rivera said the same thing in his letters.

Senator KERRY. The letters that you mailed were sent to a Mr. John Harris within that department, is that correct?

Mr. LEHTINEN. Harris ran OIA, yes.

Senator KERRY. Excuse me?

Mr. LEHTINEN. Yes, John Harris ran the Office of International Affairs. It was also orally discussed with John Harris, but the letters were sent to him.

Senator KERRY. And those letters are on file in Miami as well as in main Justice, or only in main Justice?

Mr. LEHTINEN. Miami would have them, and main Justice should have them.

Senator KERRY. Justice also. But you have no copies at this time.

Mr. LEHTINEN. No.

Senator KERRY. The response from main Justice was?

Mr. LEHTINEN. The initial response to the assistants was that they could not enforce those subpoenas against any of those, I guess 10 countries that I listed, or 9 countries that I named.

The office—the southern district went to Mr. Mark Richards in the Justice Department to get assistance in reversing that opinion and he was successful in getting permission to go to the judge on records in two places: the United Arab Emirates and Panama. Permission was still declined on the United Kingdom, France, Holland, Luxembourg, Switzerland, the Bahamas, Grand Cayman, those countries or whatever countries.

Senator KERRY. What reason was given to you for the refusal?

Mr. LEHTINEN. I don't recall a specific reason for the refusal. It is within their—it's clear that it's in their authority, we need their permission. So the assistants argued the case. And I don't recall if I was ever precise reasons.

Senator KERRY. What was your reaction to the fact that you were not able to proceed in those countries?

Mr. LEHTINEN. Well, we continued to argue orally, and later in writing again, that the grand jury subpoenas were probably the only effective mechanism to go forward and that we would have trouble going forward without them. But with respect to the two countries—and these matters are under seal, but the Wall Street Journal ran a story regarding it. And I would not comment on matters that a district judge in Miami has under seal but for the Wall Street Journal article.

So I can confirm that with respect to the two alone that the assistants received permission on, they did proceed aggressively. They went for a compulsion order. The normal pleadings went back forth. And they won the order, it went to the eleventh circuit. That was mentioned in the Wall Street Journal, I believe. The eleventh circuit upheld us.

This is all a lengthy process, but in or around June the assistants are successful in levying \$50,000 a day—or rather the judge, when

BCCI fails to follow the compulsion order of the judge after being upheld on appeal, BCCI is fined \$50,000 a day for 7 days in a row for failure to comply with the subpoenas. It then gave in and nominally complied with the subpoenas. That is to say showed up and said here are the records.

They did say, however, that records that were in Panama or UAE which came from another country, which had been in another country, were going to be treated by BCCI as though they were in the other country, so that records were held back, several files were held back in the UAE. In any event, the assistants, having been successful to that degree, used that as an argument for why the large number of subpoenas should be enforced but were not successful in doing that.

Senator KERRY. So you got two subpoenas enforced: one in Panama and the other in—

Mr. LEHTINEN. The United Arab Emirates.

Senator KERRY. The United Arab Emirates.

Mr. LEHTINEN. Except for the condition that they held back records they said had been in another county, but were now in UAE. Those were held back and we believe those should have been provided.

Senator KERRY. And it was by virtue of the fact that you were allowed to enforce the process by going to a judge and securing a \$50,000-a-day fine that you got the ultimate compliance you got, is that correct? You had to force it to the bottomline.

Mr. LEHTINEN. Right, between then, that grand jury enforcement and the indictment of BCCI or the plea agreement in December, those were the only foreign records that Miami ever received.

Senator KERRY. Now in July of 1991, Manhattan District Attorney Robert Morgenthau issued indictments against BCCI, correct?

Mr. LEHTINEN. Yes.

Senator KERRY. Did something happen within Justice after that in reaction to those indictments?

Mr. LEHTINEN. Well, upon, somewhat prior to the indictment, briefly, believing that he would indict and thereafter the Department's criminal division surveyed all of the U.S. attorneys offices, of course they knew all about us because of our efforts to enforce the subpoenas but surveyed everyone with respect to what they were doing on any of these issues that Morgenthau had dealt with and what did we need?

Did we have any problems, did we need any support and so forth. They asked us how they could help.

Senator KERRY. Is it fair to say that Bob Morgenthau's indictment created new interest?

Mr. LEHTINEN. There was substantially more interest after his indictment, yes.

Senator KERRY. And that interest was conveyed through a summoning to Washington of U.S. attorneys for a meeting to discuss the status, wasn't it?

Mr. LEHTINEN. Yes, but I believe we actually went both before and after his indictment and discussed—

Senator KERRY. The meeting before the indictment came about with the knowledge that he was about to indict?

Mr. LEHTINEN. Yes, or the belief.

Senator KERRY. Did you convey to anyone in Justice during the course of these meetings that it was critical to enforce these subpoenas?

Mr. LEHTINEN. Yes, if I was in a meeting I always mentioned the subpoenas and if my assistants were in the meetings that were often held between lower level individuals, sub-U.S. attorney level, they say that they always mentioned. I am confident they did, and then when we asked for help and they advised that we put in writing anything that we needed, we put it in writing again.

Senator KERRY. Did you subsequently write requesting further enforcement of the subpoenas?

Mr. LEHTINEN. Yes, I wrote, I got with Andreas Rivera and Sullivan and said the Department is asking what we need so let us send off requests on everything and we sent off probably seven or eight letters each one dealing with a particular area.

One of the letters, August 2—

Senator KERRY. August 2, 1991?

Mr. LEHTINEN. That's correct, on my signature this time recited the March 26 letters had a polite introduction, in light of the Department's review of BCCI, I urge again that—it was a first person type letter, I urge again that we be permitted—that I be permitted to enforce subpoenas that are outstanding.

It recites the March 26 letters. It attaches the March 26 letters and it recites again, this is—

Senator KERRY. Bottomline, were you permitted to enforce the subpoenas?

Mr. LEHTINEN. No.

Senator KERRY. Do you know why?

Mr. LEHTINEN. No, we weren't permitted to—I don't know why. That is a matter that was with the Justice Department.

Senator KERRY. Who were the letters written to?

Mr. LEHTINEN. Well, the March 26 letters were to Harris, those two letters, the April 2 letter was to Robert Mueller, the Assistant Attorney, Criminal Division. The April 19 letters were sent, one by Sullivan to a person named Peter Clark on April 19 who was designated—at that point, the Department said that all records requests of any nature or type would be coordinated by the fraud section and named a Peter Clark, Deputy Chief for the fraud section in Washington to do that.

So Sullivan wrote to Peter Clark August 19 attaching my August 2 letter I believe, attaching the March 26 letters and saying, as the coordinator, mentioning we would like to enforce the grand jury subpoenas, but also there are other methods, letters rogatory and in fact, just flying to a foreign country and asking, no judicial action whatsoever, just going someplace like to London and talking to the fraud's office, and he outlined what he thought he needed.

On the same date, Carolyn Heck who is the Chief of the Economic Crimes Division in Miami wrote to an individual named Irgenson who is the chief of the fraud section over this Peter Clark. Clark was in charge of documents at that point and she urged Irgenson, attaching the grand jury letters to not delay the grand jury enforcement, that central coordination of records production which was the goal of the Justice Department to coordinate nationally so there was no duplication and overlap, that central coordination

could potentially delay it and that she wouldn't want that central coordination to delay, for example, assistants that wanted to go to London, were scheduled to go to London from Miami, but central coordination caused their trips to not be made and were never made as I recall.

So she talked about the subpoenas April 19, Heck to Irgenson as well.

Senator KERRY. Mr. Lehtinen, how many years were you in the U.S. Attorneys Office?

Mr. LEHTINEN. 3½ years.

Senator KERRY. In the course of those 3½ years, did you have occasion to have any cases move with urgency that you created, either in reaction to what Justice required from Washington or in reaction to your own efforts, a kind of accelerated task force or prosecution?

Mr. LEHTINEN. Yes, cases can move rapidly, when the assistants in March proposed April 5 and on March 26 memorialized the request to go to the judge April 5, that didn't seem to me like too quick a time. There was plenty of time to review it and we could have compelled April 5.

Senator KERRY. Well, overall, looking at this case how would you characterize the way in which this case was going, the manner in which this case was done?

Mr. LEHTINEN. Well—

Senator KERRY. Is this a serious case—

Mr. LEHTINEN. This was a very serious case and the assistants treated it as a serious case and took all the steps that are appropriate for a high level case. Well, I would prefer not to speculate, but we did in, on another matter—I am sorry, on a BCCI matter, which hasn't been discussed now, on May 13 which is probably the better way to do it than me just say something now—on May 13 in requesting assistance on another BCCI matter and there is an indictment outstanding on it now so I shouldn't identify it, but in that letter on May 13 to the Department I said that this individual, if indicted, could crack open a case of national significance, BCCI, that BCCI was an international fraud of the highest importance, and that this target individual was—we use the phrase, to crack open to this case of highest national urgency, I believe was the word.

So we characterized it and treated it that way. That is a letter in May 1990 or May 1991. We always used that approach.

Senator KERRY. Is it your judgment that in fact the case wound up moving as a case of the highest national urgency would?

Mr. LEHTINEN. Well, we, exactly why the Department of Justice handles matters as they do is—whatever factors they take into account are not particularly known to us in Miami in all circumstances. We in Miami wanted all of those steps taken that we proposed.

They were not taken and we are just not able to say why they weren't taken at other levels.

Senator KERRY. Did you ever receive communications or were you contacted by the CIA with respect to the case and requested not to proceed to subpoena someone or to deal with anybody?

Mr. LEHTINEN. No. The question refers to BCCI?

Senator KERRY. No, generically, any cases.

Mr. LEHTINEN. Oh, I am sorry, you did say generically, I am sorry. Yes.

Senator KERRY. Is there a procedure—

Mr. LEHTINEN. We were contacted.

Senator KERRY. Is there a procedure within Government, an act specifically under which they are supposed to do that?

Mr. LEHTINEN. Our understanding in Miami is that if national security concerns, the types of concerns the CIA would have were to influence in any way a criminal investigation, that the procedures of the Classified Information Procedures Act should be followed, and that provides for a method by which others higher than the U.S. attorney or a CIA lawyer can decide the relative merits, and they are entitled to issue orders to a U.S. attorney which he should follow, to not do certain things.

Senator KERRY. Were those other communications received under that process?

Mr. LEHTINEN. No, CIPA was not—

Senator KERRY. Was not invoked.

Mr. LEHTINEN. Was not invoked.

Senator KERRY. Did you ever receive communication from the CIA with respect to either CenTrust or BCCI, any witness or any information you sought?

Mr. LEHTINEN. Not that I am aware of, no.

Senator KERRY. OK. I have a number of more questions, let me let Senator Brown have a round here and then I will come back.

Senator BROWN. Thank you for joining us today. You mentioned in your earlier testimony the plea agreement that was worked in another jurisdiction. As I recall you testified that that left you free to bring tax charges or charges relating to tax evasion.

Mr. LEHTINEN. Yes, Senator, I believe Senator Kerry's question was at that time, that it was worked out, that we believed we were free, yes we did believe we were free. To be clear, at subsequent dates, which are beyond any dates that have been discussed to far, the Department expressed the opposite view, but my answer was correct, when the plea was worked out, we believed we could bring tax charges.

Senator BROWN. Did you have a chance to become familiar at that time with the entire nature of the plea agreement?

Mr. LEHTINEN. The district did, that is to say the southern district, my district did, yes. It was—it saw copies just before it was entered, before it was official.

Senator BROWN. I know this is a complicated matter involving lots of aspects, but are you comfortable at that time, you had a good feel for the range of issues that were involved in this plea agreement?

Mr. LEHTINEN. I was confident that the assistants did. You see there were really two issues. One was would the plea agreement bar us and we did not participate in the plea agreement and were of the opinion that we would not be blocked by contract, by agreement or waiver.

Second, a different issue as to whether a double jeopardy issue exists, that is constitutional, that is to say, if someone has been charged with a bank robbery in Boston on a certain date they can

never be tried again if they have been tried. That isn't a question of the Government waiving, that is a question of, you just can't do it twice.

Senator BROWN. Sure.

Mr. LEHTINEN. And we were, on the plea agreement bar by contract, we were confident we wouldn't be barred by contract or agreement and we were confident on double jeopardy or we believed that it wouldn't bar us on tax.

Senator BROWN. So at least at that point you were comfortable that several of the areas you thought were significant and important would not be closed out to your action and your prosecution?

Mr. LEHTINEN. Yes, we did not believe they would be closed out.

Senator BROWN. With what you knew about the agreement at the time, do you have an opinion about how good or bad the agreement was? Was it a good agreement, bad agreement? Were the interests of the Government served?

Mr. LEHTINEN. I really did not have an opinion about the agreement. Our assistants were made aware of the agreement as a law enforcement matter, as a courtesy our assistants reviewed it. We really had no way of knowing why Tampa would do something and really to this day, I really don't have any right to conclude about what is good or bad in the Tampa plea.

Senator BROWN. But I take it at least in your mind, an opportunity to pursue both tax issues and other issues was preserved by that agreement?

Mr. LEHTINEN. Yes, referring to the 1990, our belief in 1990, yes.

Senator BROWN. You also talked about not being allowed to enforce the subpoenas. How as it—what actions were taken that jeopardized your ability to enforce those subpoenas?

Mr. LEHTINEN. Well, we moved to compel enforcement of subpoenas, routine subpoenas that deal with domestically located records without anyone's permission. However, the rule within the Department is that if—I am only paraphrasing my understanding of it, but if a subpoena is to require performance outside of the United States, whether it says it on its face or not, if it just says all records and the records are in France, then if it requires that performance, we are supposed to get departmental permission.

Now our circuit, the eleventh circuit is very clear, those subpoenas will be enforced. Some other circuits are a little bit different, but our circuit is very aggressive and as the district judges, the matter is not under seal because they were revealed in the Wall Street Journal indicates that district judge did aggressively enforce two subpoenas we had permission on.

But we simply need permission to do something, so it is not as much a question of anyone blocking us, it is that if we can't get permission to do it, then we don't have the really one and only method of doing a criminal investigation which is grand jury subpoena. If you don't have that power you don't have much of an investigation.

Senator BROWN. You had obtained a subpoena, it had been served on the institution—

Mr. LEHTINEN. BCCI, Miami—

Senator BROWN. They had failed to comply?

Mr. LEHTINEN. That's right.

Senator BROWN. Does enforcement of the subpoena involve foreign travel, execution in a foreign country? Is that the reason for the rule?

Mr. LEHTINEN. No, the eleventh circuit's approach to it, and not to discuss the legal concept in too much detail, but the approach of our eleventh circuit which is our Atlanta court of appeals covering Miami, is that if an organizational entity does business in our area, in Miami, and it does business elsewhere and holds itself out to be one unified corporate entity, then we can subpoena it in Miami and it is obligated, holding itself out as an organization to comply insofar as it can. And if that means records that BCCI or an entity has in France, they have to comply.

That was litigated, of course, by corporations years and years ago, claiming well maybe France doesn't let us provide the records, but the judges generally don't enforce if the overseas law puts the receiver of the subpoena in a no-win situation, that is explained to the judge and the judge understands that, doesn't hold people in contempt for that.

But the point is that the Federal Court in the Eleventh Judicial Circuit will aggressively enforce subpoenas against corporations where the corporation claims its performance is overseas, but the Federal Government's role is to issue a subpoena from a Miami grand jury to a Miami corporation, returnable in Miami.

Only the corporation claims that that requires us to do something in Abu Dhabi or UAE or Panama and therefore we can't do it.

Then to join the issue you have to move to compel, but we could not move to compel on all but two, so we really do not know what their reasons would have been.

Senator BROWN. So the breakdown in getting enforcement on the subpoena was the inability to move to compel?

Mr. LEHTINEN. That's correct. The subpoena appears to be a compulsion order itself, but it's really not unless a Federal judge issues a compulsion order, and they won't do it unless we ask for it, and if we can't ask for it, the subpoena is useless.

Senator BROWN. I take it your testimony is that for you to be able to move to compel within your own jurisdiction, you had to have Justice Department approval?

Mr. LEHTINEN. That's correct.

Senator BROWN. You requested that approval?

Mr. LEHTINEN. That's correct.

Senator BROWN. When did you request that approval?

Mr. LEHTINEN. Orally on numerous occasions, but the first was in writing, March 26, two different letters, to the Office of International Affairs, then oral followup and discussion. Another written request on August 2 pursuant to them asking how can we help you, what do you need, to Mueller.

Two written requests August 19, to the person in the fraud section who is supposed to be in charge of BCCI document issues, that was by Sullivan, and then the same day, August 19, in writing to Irgenson who headed the fraud section. And then, oral requests all the way until November, plus written submissions and meetings with OIA in Miami.

OIA met with Rivera and Mary Butler, I think, an assistant, in August. I know they were in Miami in August. Our people described what they needed, also wanted OIA to help on informal requests, letters rogatory, or just going to London, because the assistants were told they should not go alone to London and that was being centrally coordinated, and that is the way we made the request. And the only records that were obtained were from the two that were permitted up until November, through and including the indictment, no other records were ever received.

Senator BROWN. I know our staff has chatted with you beforehand. Have we gotten copies or do you have copies of the written requests that you made?

Mr. LEHTINEN. No, I don't. I don't know—

Senator BROWN. I would assume that those might be available?

Senator KERRY. Well, Justice has those. I got a call from Assistant Attorney General Mueller this morning before we came here and he had some letters that he wanted us to see and said they would be sent up here. I do not have them yet. Have you received them yet? I am waiting to see them, but obviously the committee would, I think, would want to request the entire span of correspondence and I think we ought to, but apparently there were a couple of letters that they were sending up that they thought were relevant in terms of responses they made or something. Obviously I would like to see those and we could inquire about them.

Senator BROWN. I have a couple here.

Senator KERRY. Why do you have them and I do not? What does that indicate?

Senator BROWN. Well, I simply may be more trustworthy. [Laughter.]

Senator KERRY. These are the two letters. Have you read them?

Senator BROWN. I have just glanced at this one. I just received them.

Mr. LEHTINEN. Senator, if those are the same two as are sitting here, those letters do not relate to subpoenas, they relate to whether or not we indicted.

Senator KERRY. I apologize, we do have them.

Senator BROWN. Did you receive oral or written responses to these numerous requests?

Mr. LEHTINEN. Many are oral responses. The assistants were telling me in August that OIA, when I visited Miami, said the permission would be imminent, that it would be imminent, that it would be weekly, that we'd get it next week. Then when they were told not to go to London themselves, they were told they'd be able to go to London when the fraud section went to London, but oral discussions produced nothing.

And then, on November 1, the woman from the fraud section said that Peter Clark had gone to London already three times from the fraud section and had forgotten to take Miami's request with him, that Miami's requests were not taken.

Senator BROWN. Well, I thought there were a couple aspects of this. One was simply getting permission to compel enforcement of the subpoena.

Mr. LEHTINEN. That's correct, Senator.

Senator BROWN. That would not necessitate a trip to London would it? It would simply be giving permission to allow you to go ahead and file that request to compel with the court.

Mr. LEHTINEN. Absolutely, an oral phone call saying you could do it was all that was needed.

Senator BROWN. So this was not a question of someone taking a trip to London or Paris, this was a question of simply giving you an OK to file that request for compliance.

Mr. LEHTINEN. That's correct. I only mentioned that because you asked beyond these letters, what discussions were there, and our people always urged and I did too that any alternative mechanisms that the department thought existed, not keep us from enforcing the subpoenas and we wanted to enforce the subpoenas.

The alternative methods which we did not think were adequate, but were related, would be to fly to London and talk to the serious fraud office, or do letters rogatory, and all of those matters were pursued at the same time, but none of them came to fruition either.

Senator BROWN. Did they ever indicate why you were not to be given permission to request compliance?

Mr. LEHTINEN. No, only to the extent that sometime in and around late August, OIA said that they no longer really could give permission, that the fraud section controlled all of this. That's the only reason why.

Senator BROWN. To an outsider this sounds like very strange behavior. How do you assess this?

Mr. LEHTINEN. Senator, I've always thought, and what we've always told agents who get very upset about these kinds of things, was that we've made our requests and we keep repeating and we're very vociferous about it within channels, but I just don't know what factors would be taken into account in Washington. It's not my place to make a judgment.

Senator BROWN. Let me put it in perspective at least from what I am hearing and maybe you will correct me. You have an important case. You issue a subpoena for vital, needed evidence to make your case. You followup on the prosecution. They do not comply with that subpoena and you request permission to order compliance.

Mr. LEHTINEN. That's correct.

Senator BROWN. That request to order compliance only involves permission, it does not involve any additional expense other than simply the filing of the order, and you never receive that permission.

Mr. LEHTINEN. That's correct.

Senator BROWN. You never receive an explanation as to why the Justice Department would not want to pursue obtaining the evidence?

Mr. LEHTINEN. That's correct too. There were discussions a lot, but whenever this was brought up the commentary always was well, we'll get the permission imminently, or we'll make sure we look into it, or who's handling that. There were discussions about why my assistants were not allowed to go to London, a totally different issue, that is to say, to go there and ask for different things, totally different.

And the fraud section said, we want to coordinate it and we need a centralized coordination and so forth. But with respect to subpoena, no. I was written a memo in November by an assistant on the case who said—the assistant says in the memo, we still have not been told why we can't do it or what's going on.

Senator BROWN. In the press reports about your testimony, we understood that you had written a letter on August 19, 1991. Can you tell us about that letter?

Mr. LEHTINEN. August 19 would have been two letters signed by—

Senator BROWN. It was relating to, I believe, the expiration of the statute of limitation and a request to bring charges.

Mr. LEHTINEN. The August 19 letters would have been the third and fourth letter—I'm sorry, the fourth and fifth letters written to or that alluded to, or requested the grand jury subpoena enforcement, but you may be thinking of a later issue—a short time later, but later nonetheless, about our proposal to indict BCCI. That was not August 19, that was August 22 and 23.

Senator BROWN. I would like you to tell us about those letters and what went into it, and if you have copies of those, supply it to the committee.

Mr. LEHTINEN. Senator, I don't, except what apparently are the letters that the Justice Department may have provided.

Senator KERRY. Let me interrupt here for 1 minute, if I can. Is there any representative of Justice here? Can you just identify yourself from where you are?

Mr. REINHARDT. Associate Deputy Attorney General Tom Reinhardt.

Senator KERRY. Is there any reason that we could not have the full file of correspondence provided to us today?

Mr. REINHARDT. Let me check with the Department, sir, and I will get back. I think the specific question is on the August 22 and 23 letters.

Senator KERRY. Let me ask you, maybe you would come up. Would you just say your name again for the record, please?

Mr. REINHARDT. Associate Deputy Attorney General Reinhardt.

Senator KERRY. My question to you again for the record is, is there any reason why we could not get the full file of the correspondence from Mr. Lehtinen to the Department, and the Department's responses?

Mr. REINHARDT. I believe this correspondence starts, sir, with the letter dated October 22, 1991. Excuse me, August 22, 1991.

Senator KERRY. It was March 26, was it not? What is your first letter of request?

Mr. LEHTINEN. On subpoenas, March 26, signed by Sullivan and Rivera, August 2, signed by me, August 19, signed by Heck, and another one signed by Sullivan. The other matter that you're alluding to but hasn't been discussed, August 22, a letter signed by me. I think that's it, that dealt with an indictment, that did not deal with subpoenas.

Senator BROWN. I can appreciate not having a copy of that August 22 letter in front of you, that it makes your task of relating its contents and the thought behind it were difficult, but if you would, from your recollection, tell us about that communication.

Mr. LEHTINEN. Well, I certainly remember the letter.

Senator KERRY. Just before Mr. Reinhardt goes, when do you think you can give us a sense of that?

Mr. REINHARDT. I'll go back and get on the phone right now, Senator.

Senator KERRY. I appreciate that, thank you.

Mr. TEW. Could I draw your attention, Senator, to the fact that they have produced references to the document in question?

Senator KERRY. That is correct. The letter produced by Justice is a letter dated August 23, 1991, and it references Mr. Lehtinen's telefaxed letter of the day preceding, and both of these obviously will be placed in the record, but we would like to have the full record.

[The information referred to follows:]



United States Attorney

Southern District of Florida

255 South Miami Avenue, Suite 700
Miami, Florida 33130

BY TELEFAX AND OVERNIGHT

August 22, 1991

Mr. John Smietanka
Department of Justice
Washington, D.C.

Re: BCCI Tax Indictment and Statute of Limitations Problem

Dear Mr.  Smietanka:

I want to bring to your attention the statute of limitations problem what we will create in the BCCI case if we do not indict as previously scheduled on Friday, August 23rd (tomorrow).

The attached letter to Mr. Dennis Saylor (dated today, August 22nd) outlines the issue. In sum, we will be barred from charging an important count (Count 6 in the latest draft indictment) involving BCCI violating 26 USC 7206(2), aiding filing a false return for the year 1984 (filed August 28, 1985), when the statute of limitations expires on August 28th (next Wednesday).

This is an important count in that it covers the first year in which the most important cooperating witness/taxpayer's account was established. Thus, testimony regarding this year will involve direct conversations between the witness and at least two BCCI officers.

Thank you for your attention to this matter.

Sincerely,



Dexter Lehtinen
United States Attorney

DL:ld



United States Attorney

Southern District of Florida

151 South Miami Avenue, Suite 700
Miami, Florida 33131

BY TELEFAX AND OVERNIGHT

August 22, 1991

Mr. John C. Keeney
Deputy Assistant Attorney General
Criminal Division
Department of Justice
Washington, D.C.

Re: BCCI Tax Indictment and Statute of Limitations Problem

Dear Mr. Keeney:

As we discussed by phone, I want to point out the statute of limitations problem that we will create in the BCCI case if we do not indict as previously scheduled on Friday, August 23rd (tomorrow).

The attached letter to Mr. Dennis Saylor (dated today, August 22nd) outlines the issue. In sum, we will be barred from charging an important count (Count 6 in the latest draft indictment) involving BCCI violating 26 USC 7206(2), aiding filing a false return for the year 1984 (filed August 28, 1985), when the statute of limitations expires on August 28th (next Wednesday).

This is an important count in that it covers the first year in which the most important cooperating witness/taxpayer's account was established. Thus, testimony regarding this year will involve direct conversations between the witness and at least two BCCI officers.

Thank you for your attention to this matter.

Sincerely,

Dexter Lehtinen
United States Attorney

DL:ld



U.S. Department of Justice

United States Attorney

Southern District of Florida

155 South Miami Avenue, Suite 700
Miami, Florida 33130

BY TELEFAX AND OVERNIGHT

August 22, 1991

Ms. Shirley D. Peterson
Assistant Attorney General
Tax Division
Department of Justice
Washington, D.C.

Re: BCCI Tax Indictment and Statute of Limitations Problem

Dear Ms. Peterson:

I want to bring to your attention the statute of limitations problem that we will create in the BCCI case if we do not indict as previously scheduled on Friday, August 23rd (tomorrow).

The attached letter to Mr. Dennis Saylor (dated today, August 22nd) outlines the issue. In sum, we will be barred from charging an important count (Count 6 in the latest draft indictment) involving BCCI violating 26 USC 7206(2), aiding filing a false return for the year 1984 (filed August 28, 1985), when the statute of limitations expires on August 28th (next Wednesday).

This is an important count in that it covers the first year in which the most important cooperating witness/taxpayer's account was established. Thus, testimony regarding this year will involve direct conversations between the witness and at least two BCCI officers.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Dexter Lehtinen".

Dexter Lehtinen
United States Attorney

DL:ld



United States Attorney

Southern District of Florida

222 South Miami Avenue, Suite 700
Miami, Florida 33130

BY TELEFAX AND OVERNIGHT

August 22, 1991

Mr. George Terwilliger
Deputy Attorney General
Department of Justice
Washington, D.C.

Re: BCCI Tax Indictment and Statute of Limitations Problem

Dear Mr. Terwilliger:

I want to bring to your attention the statute of limitations problem what we will create in the BCCI case if we do not indict as previously scheduled on Friday, August 23rd (tomorrow).

The attached letter to Mr. Dennis Saylor (dated today, August 22nd) outlines the issue. In sum, we will be barred from charging an important count (Count 6 in the latest draft indictment) involving BCCI violating 26 USC 7206(2), aiding filing a false return for the year 1984 (filed August 28, 1985), when the statute of limitations expires on August 28th (next Wednesday).

This is an important count in that it covers the first year in which the most important cooperating witness/taxpayer's account was established. Thus, testimony regarding this year will involve direct conversations between the witness and at least two BCCI officers.

Thank you for your attention to this matter.

Sincerely,


Dexter Lehtinen
United States Attorney

DL:ld



United States Attorney

Southern District of Florida

*191 South Miami Avenue, Suite 700
Miami, Florida 33130*

BY TELEFAX AND OVERNIGHT

August 22, 1991

Mr. Dennis Saylor
Special Counsel
Criminal Division
Department of Justice
Washington, D.C.

Re: BCCI Tax Indictment and Statute of Limitations Problem

Dear *Dennis* ~~Mr. Saylor~~:

I want to bring to your attention the statute of limitations problem what we will create in the BCCI case if we do not indict as previously scheduled on Friday, August 23rd (tomorrow).

The attached letter outlines the issue. In sum, we will be barred from charging an important count (Count 6 in the latest draft indictment) involving BCCI violating 26 USC 7206(2), aiding filing a false return for the year 1984 (filed August 28, 1985), when the statute of limitations expires on August 28th (next Wednesday).

This is an important count in that it covers the first year in which the most important cooperating witness/taxpayer's account was established. Thus, testimony regarding this year will involve direct conversations between the witness and at least two BCCI officers.

Thank you for your attention to this matter.

Sincerely,

Dexter Lehtinen
United States Attorney

DL:ld



U.S. Department of Justice

United States Attorney

Southern District of Florida

155 South Miami Avenue, Suite 700
Miami, Florida 33130

BY TELEFAX AND OVERNIGHT MAIL

August 22, 1991

Mr. F. Dennis Saylor
Special Counsel, Criminal Division
Department of Justice
Washington, D.C.

Re: BCCI Tax Indictment; Statute of Limitations Problem

Dear Mr. Saylor:

This is to confirm the telephone call which you placed to me this morning, in which you indicated that Acting Attorney General William Barr has directed me not to present the indictment of the Bank of Credit and Commerce (BCCI) to the Grand Jury tomorrow (Friday, August 23rd), as has been scheduled.

As I indicated, this office has been investigating this matter for more than a year and we are ready to present the indictment to the Grand Jury. We have been in contact with the Department of Justice on this case over the past year, including by our March 26, 1991 letter requesting authorization to enforce subpoenas. On July 26th, Mr. Robert Mueller, Assistant Attorney General, Criminal Division, asked that this office make every effort to indict this specific case within 30 days. In addition, this office anticipated the expiration of the statute of limitations on an important tax count on August 28th. Therefore, this office has planned for some time to indict on August 23rd. The planned indictment has been discussed in numerous Washington meetings with representatives of my office being asked for assurances that our schedule would be met.

By letter dated August 5th to Mr. Mueller and Ms. Peterson (Assistant Attorney General, Tax Division) (copy attached), I requested expedited review beginning the week of August 19th, thus permitting indictment tomorrow, August 23rd. Such review has been provided as I requested; and both IRS and Tax Division attorneys have completed on-site reviews here in Miami and have recommended approval. This office is ready to present the case to the Grand Jury upon final approval, which I believed would be provided today by the supervisory reviewer who is also on-site here in Miami.

It is important that the indictment be presented as soon as possible. As I indicated, the statute of limitations will expire

on one of the tax counts (Count 6 in the latest draft indictment, aiding filing a false return, 26 USC 7206(2)) on Wednesday, August 28th. This is an important Count in that it covers the first year in which the most important cooperating witness/taxpayer's account was established. Thus, testimony regarding this year would involve direct conversations between the witness and at least two BCCI officers. The Grand Jury meets every Friday; thus, this delay of one week will necessitate dropping Count 6. The importance of this date (August 28th) is clearly articulated in the documentation submitted to the Tax Division and has been discussed orally with the tax reviewers. This has been an important reason why this office set August 23rd as the appropriate date for presentation of the indictment.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dexter W. Lehtinen".

Dexter W. Lehtinen

DL:ld



U.S. Department of Justice

Tax Division

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Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

August 23, 1991

The Honorable Dexter W. Lehtinen
United States Attorney
Southern District of Florida
155 South Miami Avenue
Miami, FL 33130

Re: BCCI Tax Investigation

Dear Mr. Lehtinen:

I received your telefaxed letter yesterday afternoon at approximately 2:45 p.m. Shortly afterward I received your office's second draft of the Indictment you seek to present to a grand jury today. In your letter to me, and the accompanying copy of your letter to Mr. F. Dennis Saylor of the Criminal Division, you caution that after pursuing this investigation for more than a year you must be permitted to present the indictment to the grand jury today or you will pass the six-year statute of limitations on one count of a 19-count indictment. What you neglect to point out is that your office has not conducted an authorized tax grand jury investigation of this case and has only recently turned its attention to bringing tax charges. As a result, our review of the case, which commenced in accordance with your request in Miami on Monday, August 19, 1991, has revealed that although this case appears to present a potentially viable prosecution, considerable additional work is necessary to bring a prosecution that is factually and legally supportable.

Your letter describes Count VI of yesterday's draft, the count due to expire August 28, 1991, as "important." It pertains to allegations that two BCCI subsidiaries and two BCCI employees (one resident in [REDACTED]) aided and assisted [REDACTED] (a convicted cooperating witness) in filing a false 1984 return. Our office was informed for the first time on August 19, 1991, that you intended to include a substantive tax charge relating to [REDACTED]'s 1984 return which was filed on August 28, 1985, and that the six-year statute of limitations for that proposed count will expire on August 28, 1991. Our review of the remainder of the proposed indictment reveals that none of the

The Honorable Dexter W. Lehtinen
August 23, 1991
Page 2

other proposed counts will be in jeopardy of passing a statute of limitations until October, 1991.^{1/}

The draft indictment contains four proposed counts against the two bank subsidiaries and the two employees involving [REDACTED]'s 1984, 1985, 1986, and 1987 returns.^{2/} Therefore, even if the 1984 count is permitted to expire to permit us to assure the factual and legal soundness of the entire indictment, the remaining 1985 through 1987 [REDACTED] counts, together with the conspiracy proposed in Count I, will provide ample opportunity for the government to prove at trial the full scope of the proposed defendants' actions as they relate to all of [REDACTED]'s returns. Loss of the 1984 [REDACTED] count will obviously have no impact on the government's ability to successfully prosecute this case.

There are, however, some important issues presented in the draft indictment that, if left unresolved, could seriously jeopardize any attempt to prosecute this case and potentially embarrass the government. Shortly after I received your telefax, our reviewers on-site in Miami (who contrary to the representation in your letter to Mr. Saylor have not recommended prosecution in conformity with any of the draft indictments your office has supplied) first received IRS District Counsel's referral to the Department of Justice which recommends declination of all 17 of the proposed Section 7206(2) counts

1/ It appears that your office had already decided to allow the statute of limitations to expire on one count involving the same proposed defendants' similar efforts to aid and assist another convicted cooperating witness, [REDACTED], in preparing his ([REDACTED]'s) 1984 individual income tax return, filed on [REDACTED] 1985. The 1984 [REDACTED] count (Count XIV of the original draft) was submitted to this office's on-site reviewers for approval on August 19, 1991, notwithstanding the fact that the grand jury had not been scheduled to convene until August 23, 1991, three days after the expiration of the statute of limitations on that count.

2/ The original draft also included a count relating to [REDACTED]'s 1988 return. That count (original draft Count X), as well as similar counts relating to the 1988 returns of cooperating witnesses [REDACTED] and [REDACTED] (original draft Counts XV and XX), had to be dropped from the referral, because our reviewers determined that the 1988 returns in question had accurately reported the interest paid by the offshore branch of BCCI. Accordingly, there was no factual basis for charging those 1988 violations of Section 7206(2) proposed by your office.

██████████. Although this office has some questions about District Counsel's legal analysis, it is clear that in a case involving federal tax charges against foreign corporations and nationals, District Counsel has raised issues that cannot be heedlessly cast aside.

District Counsel has also recommended that the aspect of the proposed conspiracy charges against BCCI and certain of its foreign and domestic employees relating to false tax returns filed by ██████████ should be declined for a lack of evidence of knowledge and intent. The evidence reveals considerable ambiguity concerning ██████████

Aside from these factual questions, I am troubled by the manner in which some of the offenses are proposed to be charged in the current draft indictment. Particularly troublesome to me are _____

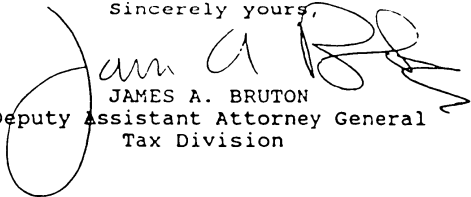
The Honorable Dexter W. Lehtinen
August 23, 1991
Page 4

██████████ In addition, I have found significant drafting errors in the proposed indictment that must be corrected before an indictment could responsibly be presented to a grand jury.

As you know, since the Tax Division was first notified two weeks ago of the need for expedited review, I have had two of our trial attorneys in Miami working with your office and the IRS to review and assist in the preparation of this and other BCCI matters pending in your office. In view of the urgency of your request, these two Tax Division attorneys began reviewing the grand jury evidence in Miami three days ahead of your schedule on August 16, 1991, and worked continuously throughout the week and through the weekend. In addition, I have taken the unusual step of assigning Assistant Chief Jerrold Kluger, a tax prosecutor with nearly 20 years' experience, to travel to Miami for the sole purpose of overseeing the on-site review being conducted by the other two lawyers. These prosecutors are working hard to resolve the problems presented by this case on unusually short notice, and they have been diligent in keeping me informed of the evidence and the progress of their review.

It is our intention to assist your office in every way possible to bring this and related matters promptly to a successful conclusion. But, based upon what I have seen so far, additional time is absolutely essential to assure that neither your office, this office, nor the United States Government is embarrassed by precipitous pursuit of factually insufficient or legally erroneous charges in court.

Sincerely yours,


JAMES A. BRUTON
Deputy Assistant Attorney General
Tax Division

cc: ✓ Dennis Saylor, IV
Special Counsel and Chief of Staff
to the Assistant Attorney General
Criminal Division

Senator BROWN. If you would, tell us about the August 22 letter and what your thought was behind that communication.

Mr. LEHTINEN. Mr. Rivera was proceeding as aggressively as possible on a potential tax indictment of BCCI. In or around late July or early August, Mr. Mueller indicated to Mr. Rivera and to me as well that they would prefer that our indictment—that we work aggressively on it as much as possible. Rivera did so and requested that the Tax Division which is supposed to review all tax cases come to Miami, which is not too unusual. They've done onsite reviews on many cases, come to Miami to do the review or however that process works. I believe they did that at Mr. Mueller's urging or at our request. In any event, they did it and we planned to indict on August 23, which is a Friday. This grand jury had received substantial information. This was the grand jury that was handling BCCI.

They put different witnesses into the grand jury periodically, and several weeks before that, we set August 23 as the date and expected to indict on August 23 and underwent onsite review and Assistant United States Attorney Rivera, Mary Butler, and others, working with the onsite people, said that we would be able to go on August 23. That the onsite reviews were going well, and we would have no problem meeting the deadline.

On August 22, the assistant U.S. attorneys told me the case could go August 23, that they did not believe there was a problem with the onsite review and so the case was, from my viewpoint, set to go. What that means in that particular case was simply that the indictment, often called a draft indictment, but at that point the indictment that the district was satisfied with, called draft until the day it's signed by the grand jury foreman.

The indictment would be presented to the grand jury, read, discussed, maybe only one or two very short fact witnesses, because all the predicate was essentially in the grand jury, and it would probably have been voted out before noon. In other words, it was simply a presentation of the indictment, and you weren't starting from scratch. So all we had left, in other words, was to present the written indictment and have the grand jury vote on it.

I received a phone call a little bit before noon on August 22 from Denis Saylor who indicated to me that I was directed not to return the BCCI indictment. And I asked who was directing me not to return it, and he said Attorney General William Barr. I asked why we weren't returning the indictment, if it was tax, tax was onsite and tax would talk to us. I mean, if the Tax Division had an evidentiary problem, Tax Division onsite would simply say no.

I asked, why are we being told this way not to indict, and he said he didn't know, but that I was scheduled for other reasons—BCCI—on a preset meeting to be in Washington Monday, August 26 and I could ask then.

Senator KERRY. I want to try to interpret it correctly. Looking at their letter of August 23, which I think you have a copy of in front of you, this does not relate at all to the subpoenas or to subpoena enforcement.

Mr. LEHTINEN. No.

Senator KERRY. It is a separate issue. They are now responding specifically to your indictment and what you have referred to as

the draft indictment. But as I read it, they suggest that they have questions about the legal and factual capacity of this indictment to proceed and that they are raising important issues that they feel, quote, if left unresolved could seriously jeopardize any attempt to prosecute the case and potentially embarrass the Government, close quote. That would seem to me to be a legitimate concern to be expressed by the boss, so to speak.

Mr. LEHTINEN. There is no question but that Tax Division approval is needed on tax indictments. The southern district never returned a tax indictment unless Tax Division approved it. That is why Tax Division was on site and any expression of lack of approval because of evidentiary weaknesses would be concurred or would be concurred in and were concurred in.

On August 22, I wrote the letter I wrote on August 22 because I was told that the phone caller did not know why, so I asked my assistants why—I mean, I said to my assistants—

Senator KERRY. You are saying that the tax folks had signed off on it?

Mr. LEHTINEN. The tax folks were onsite and our assistants said that they saw no problem with the local reviewers. I am not saying that if the assistants came into the office at 2:00 on Thursday and said, look, in the end, Tax Division says no, I am not saying we would have returned it.

If Tax Division said no, at any point, we would not return an indictment for evidentiary reasons or as they later said, because we were barred by the Tampa plea because we couldn't get a tax case because of the Tampa case.

Senator KERRY. What about the legitimacy of their suggestion that you have not conducted an authorized tax grand jury investigation of the case? On its face this strikes me from a hierarchical institutional point of view as a legitimate concern. I am just asking you to address that.

I mean, is this a legitimate concern or is this somehow, something that you feel was extraneous to your ability to proceed?

Mr. LEHTINEN. I think if I recall, what is best to say is that on August 22 we were ordered not to return it by that phone call. I confirmed that with the August 22 letter because I thought it was the best proceeding—if Tax Division had told my assistants you can't return it for evidentiary reasons, I would not have confirmed it with a letter because that is a tax communication on evidentiary grounds to the assistants.

Since I was receiving a phone call from nontax people, simply saying not to return it, I did nothing more than confirm it and point out a statute of limitations problem. Following that, subsequent discussions that Tax Division had expressed evidentiary objections for about the first 2 weeks and then expressed that we simply could not do it because we were barred by the Tampa plea, that Tampa's plea would block other U.S. attorneys from bringing these cases.

This letter, insofar as it expresses evidentiary objections, I don't have any opinion about. The Department is entitled to have evidentiary objections. We are not entitled to override them. We never did override them. We just argued with them—

Senator KERRY. What I am trying to understand, Mr. Lehtinen and you can understand the problem here, what I am trying to get at, and I think Senator Brown is trying to understand is, I mean, here we have a sequence of events. You have a denial of your ability to proceed forward on your subpoena enforcement, correct?

Mr. LEHTINEN. Yes.

Senator KERRY. So we don't have enforcement of the subpoenas. The next thing we hear you say is that you wanted to proceed forward with the indictment but I got a telephone call that said don't. So the obvious question to the committee is, is there a sequence of events where something is happening in Washington that is frustrating you or is there a legitimate concern that you should not proceed forward for legitimate reasons?

Now the letter that they set out here suggests that they had a legitimate concern, let me just read it. It says:

Dear Mr. Lehtinen, I received your telefax letter yesterday afternoon at approximately 2:45 p.m. Shortly afterward I received your office's second draft of the indictment you seek to present to a grand jury today. In your letter to me and the accompanying copy of your letter to Mr. F. Dennis Saylor of the criminal division, you caution that after pursuing this investigation for more than a year, you must be permitted to present the indictment to the grand jury today or you will pass the 6 year statute of limitations on one count of the 19 count indictment.

What you neglect to point out is that your office has not conducted an authorized tax grand jury investigation of this case and has only recently turned its attention to bringing tax charges. As a result: our review of the case which commenced in accordance with your request in Miami on Monday, August 19, 1991, has revealed that although this case appears to present a potentially viable prosecution, considerable additional work is necessary to bring a prosecution that is factually and legally supportable.

So my question to you is, is that not a legitimate presentation of concern by the people ultimately responsible for this or are you asserting that that is a camouflage, a phony barrier or something which was put up to thwart you?

Mr. LEHTINEN. Let me say several things, other than my August 22 letter which confirmed that we were being ordered not to indict and recited statute of limitations problems, I actually haven't asserted anything. Now with respect to your questions, evidentiary objections, the legitimacy of them are entirely, I can't say whether they believe them or whether they objected.

My assistants disagreed with their evidentiary objections, but the paragraph you read has several things other than evidentiary objections. The paragraph implies that the southern district of Florida never did an authorized tax grand jury investigation. This case was well known to the Justice Department for a long time.

I don't know what they are talking about there. If they are talking about some arcane rule that Andreas Rivera didn't know about and he consulted with the Tax Division for a long time, and then on the last day they say to him, by the way, you didn't file such and such form that made your ongoing grand jury about which we were fully aware, and we had concurred to do an onsite review and now on August 23 I write to your U.S. attorney and say your grand jury investigation is not authorized—that is very peculiar. That is very odd. That is a useless and foolish sentence in this letter.

I don't know why it's there. It appears to me it is there because they didn't like my August 22 letter, but that is with respect to statements in this letter that say things like that, let me point out,

you didn't do an authorized grand jury investigation, that is foolish.

But evidentiary objections I can't comment on, Senator, they have a right to make them. If they say your case is too weak, they have a right to do that. I would have thought that would have come from the—this letter looks legitimate, I would have thought that Andreas Rivera would have been told this on August 22 and there would have been no need for a phone call from Washington to me personally asserting that I shouldn't do it for unknown reasons.

All they had to do was Bruton had to tell Andreas this on August 22 and that would be it, I would not have written a confirming letter.

Senator KERRY. Was it your judgment and the judgment of your assistants that this case was ready to proceed forward?

Mr. LEHTINEN. I am sorry, Senator.

Senator KERRY. Was it your judgment and the judgment of your assistants that this case was ready for indictment?

Mr. LEHTINEN. It was my judgment and the judgment of my assistants that the case was ready for indictment—

Senator KERRY. On November 6, several months later you received a letter in which you were given essentially carte blanc—let me read that letter to you:

Dear Mr. Lehtinen: This case was originally received in the Tax Division on August 19, 1991 when two of their trial attorneys began an onsite review of the evidence in Miami at your request. After a series of discussion with the Tax Division concerning the evidence in this case, your office has proposed a single count, Klein conspiracy to impede the IRS, consistent of four defendants listed above. In late September your office informed the Tax Division by telephone that you believed no further investigation of the proposed charges was necessary and requested prosecution approval on the existing evidence.

In the exchange of views between your office and the Tax Division, (written and oral), the Tax Division has raised substantial questions of fact and law, several of which have been addressed by your office, many of which have been left open. There are significant issues raised by the Tax Division both as to the legal standard (*United States v. Prichett*) and the apparent ready availability of more substantial proof for the proposed global case.

Next paragraph:

As you know, the Department remains committed to aggressive investigations and prosecutions of BCCI-related crimes wherever appropriate. I am therefore prepared to defer to your prosecutorial judgment on this matter with the following conditions: First, that you coordinate the proposed charging language with Assistant Attorney General Shirley Peterson of the Tax Division and Assistant Attorney General Robert Mueller of the criminal division who has overall coordination responsibility for BCCI criminal matters.

Second, I do not believe that effective prosecution of this entity is served by an incomplete investigation, and then it suggests you should followup some leads: as part of my deferral to your discretion, I expect the above aspects of the matter will receive the additional attention they need within the next 2 to 4 weeks.

This from George J. Terwilliger, the Principal Associate Deputy Attorney General. That is November 6, 1991. You were given carte blanc, correct?

Mr. LEHTINEN. Yes, except that we were told at that point that we could not do two of the BCCI entities for sure because of double jeopardy out of Tampa or plea agreement bars out of Tampa. So in reading this letter I interpreted it to mean that the double jeopardy bar still applied, but that there was a BCCI that I could go

after for other reasons. They hadn't appeared in Tampa, but yes, the carte blanche other than the restriction of double jeopardy from Tampa.

Senator KERRY. At the time, was the state of your evidence significantly different from what you had proposed on August 22?

Mr. LEHTINEN. No, it was the same evidence.

Senator KERRY. It was the same evidence?

Mr. LEHTINEN. Yes.

Senator KERRY. And a significant amount had happened nationally with respect to this case in the intervening months, had it not?

Mr. LEHTINEN. Yes.

Senator KERRY. Such as?

Mr. LEHTINEN. Well, I thought the answer was yes and I am sure it is. Nationally I am not sure, I know Congressman Schumer sent staffers to Miami and to various districts on behalf of the House Judiciary Subcommittee on Crime. I know that from our viewpoint we now had added what is not mentioned in either the Terwilliger letter or the Bruton letter, we had added several weeks into September the statement that we could not indict DOJ until—the Department of Justice told us we could not indict BCCI at all because of the Tampa plea agreement and double jeopardy.

There had been significant, Time Magazine and New York Times articles very critical of the Department, and perhaps I should add, Senator, you asked me before and I may not have answered it, let me make clear, what I say about all references to evidentiary objections is that the Department has a right to make them and what their motivation is on questioning the sufficiency of evidence I can't question. They have a right to do it—

Senator KERRY. I understand that.

Mr. LEHTINEN. But there are several other things in the letter that are not correct. The idea—

Senator KERRY. Before you get to that, I just want to make it clear that in the intervening month, did you convene a special grand jury tax case?

Mr. LEHTINEN. No—

Senator KERRY. So you really didn't cure the things—

Mr. LEHTINEN. No, that's right.

Senator KERRY. That were set out in the August 22 or 23 letters between then and the permission to go ahead in November, correct?

Mr. LEHTINEN. That's correct, we did not cure them.

Senator KERRY. Thank you.

Mr. LEHTINEN. If I might say, as I have said, this August 23 letter that refers to things like, we got the case on August 19. I mean, back in late July and early August, the criminal division and the Tax Division said, can you indict, we will do the review. I mean, this letter implies that on August 19 something showed up on their desk. I think instead what the letter is doing is being disingenuous and saying—it doesn't say it, but in reality they have been aware of and discussed this case with Miami for a considerable period of time, but didn't receive the formalized special agent's report until August 19 and therefore writes in the letter, we got your case August 19.

And I don't that is—

Senator KERRY. Is it customary for you to exchange letters in which you set out something like when the case was received and who did what when—

Mr. LEHTINEN. Generally not, Senator, not to a U.S. attorney, no.

Senator KERRY. This strikes me as a letter almost between competing attorneys' offices.

Mr. LEHTINEN. Well, the statement that you are not doing an authorized Tax Division tax case is foolish. If it not an authorized tax case that is because the Tax Division—I don't know that means. I mean, you are doing a grand jury. The Tax Division knows it. You are urged for more than a month by DOJ to indict it. You coordinate with tax. You ask for special review and then a day after you get a phone call saying the Attorney General says don't do it. The Tax Division tells you, oh, and by the way, your grand jury isn't an authorized tax grand jury.

I mean, that is the kind of thing we look at and say, it is just foolish. Now let me say about the Terwilliger's letter, that is not a comment on evidence however. We always asserted the Department had a right to reject anything on evidentiary grounds and we don't dispute that.

The letter on November 6 which says that, it also refers to August 19, that is crazy. In late July or early August, the head of the Criminal Division, Mr. Mueller, told us he—he told Andreas Rivera directly that he would specifically make sure the Tax Division handled this case effectively and efficiently. So to say tax didn't know until August 19 doesn't make a lot of sense.

Furthermore, to say that in late September your office informed the Tax Division by telephone that you believed no further investigation was necessary, that is probably true. We informed them by telephone on late September that no further investigation was necessary, but we did in the middle of August. We did it at the end of August. We did it in the beginning of September. We did it in the beginning of October and the beginning of November.

So while I can't say that I didn't tell them in the end of September that no further investigation was necessary, all I can say is that I said that for 3 months in a row more than a month before that.

I never said nor implied however that they had to take my judgment. They had a right on evidentiary matters alone to do as they wished, but the coordination should have been with the Tax Division. Again, what is not mentioned here is that by the middle of September, what was considered to be the reason I couldn't indict and we set the grand jury each Friday, was the statement made to us from the Department of Justice that you are blocked from bringing the indictment because of the Tampa plea and the Tampa double jeopardy. You can't do it period, nothing like you lack evidence or—

Senator KERRY. That is a very important statement that you have just made. You are saying to me that someone in the Department told you specifically that you can't do something because of the Tampa plea, is that accurate?

Mr. LEHTINEN. Yes.

Senator KERRY. In front of this committee on November 21, 1991, U.S. Attorney Robert Genzman said and I quote him: "The plea

agreement relates only to the U.S. attorney in Tampa. It does not bar any other prosecutors, State or Federal from prosecuting BCCI itself for any offense."

Now according to what you are saying here today that is not correct.

Mr. LEHTINEN. That is not what the Department of Justice told us. That is correct.

Senator KERRY. Well, I don't know—I was going to say I am confused, I am not sure I am as confused as I am disturbed but I sure as hell am having a hard time sorting out why some things didn't happen.

Mr. LEHTINEN. Well, Senator, the sequence for Miami and sometimes it is—if you ask who is correct, that is a somewhat confusing question because you may be asking, is there a bar or isn't there as a matter of law and one would only know from——

Senator KERRY. I am not asking a matter of law, I am asking what happened and who said what to whom and who operated on the basis of what understanding?

Mr. LEHTINEN. Well, after we were ordered not to indict, the Department then dealt with my assistants on evidentiary objections. Of course, this letter on August 23 is addressed to me but it is really to my assistants and they are told to take up the evidentiary issues, forget about the other stuff in the letter, it doesn't matter, but you know, discuss evidence.

You got to get permission, if you don't get it, we don't indict. But around the middle of September, Tax Division states unequivocally that they have grave concerns and believe that we cannot indict BCCI on tax at all because of the Tampa plea, that we are barred by waiver, that the government entered into a plea agreement in Tampa and the government is barred.

As I said earlier, that is one concept. A second concept which they also said was that whether you join the plea agreement or not, the second issue of double jeopardy bars you, that the Tampa indictment indeed had tax ramifications, that the Tax Division only just learned of it because though it was a tax ramification indictment and should have been approved by the Tax Division in 1988, that the Tax Division never saw it and played no role in approving it. Therefore they were unaware of those consequences until September 1991 when they actually got it and read it and then they found out it had tax consequences.

Senator KERRY. So you are saying in unequivocal terms that the Justice Department's basis for concern about double jeopardy was the tax basis for the Tampa indictment, correct?

Mr. LEHTINEN. Well, yes, they said the Tampa indictment, but my assistants in these meetings, many of which I was in, said that the Tampa indictment can't really double jeopardy bar us and then they would say well, the conspiracy in Tampa had within either the manners or the means or the purpose of the conspiracy, some evasion of tax laws and therefore, that raises questions or blocks you from doing it.

The actual resolution—well——

Senator KERRY. Did the tax department ever sign off on the Tampa indictment?

Mr. LEHTINEN. I was told by the Tax Division that they never saw and have no record of the Tampa indictment, that it should have been presented to them, but they have no record of it and that is why they were not aware of tax issues.

Senator KERRY. I have some other questions on that, but I interrupted Senator Brown.

Senator BROWN. Let me take you back to the August 23 letter, and what I would like to do is summarize it quickly as I go through it. I think you have got it in front of you there.

This is the August 23 letter from the Department of Justice, Tax Division. The letter is sent to you under the signature of the Deputy Assistant Attorney General Bruton.

Mr. LEHTINEN. Yes.

Senator BROWN. The first paragraph, about halfway through, an item you have already discussed so far today. The statement is made by him: "What you neglect to point out is that your office has not conducted an authorized tax grand jury investigation of this case, and has only recently turned its attention to bring tax charges."

To summarize the facts around that, you were prepared the very day of this letter to obtain an indictment from a grand jury on this tax charge, is that correct?

Mr. LEHTINEN. I was prepared to present it. My assistants were prepared to present it. I would have signed it. We were always aware Tax Division had to approve it. But for that caveat, yes, we wanted to present it and were ready to present it.

Senator BROWN. It would have been an authorized grand jury but not an authorized tax grand jury? Help me understand the difference.

Mr. LEHTINEN. I do not really know, Senator. What I know is that we dealt with Tax Division, including approvals of BCCI customers. Sometimes I wrote the letter; sometimes the assistants wrote the letters for more than a year, always asserting in our tax investigations, that BCCI is a target, is a tax target of a grand jury investigation; that if we can do this particular client we can get BCCI, perhaps on tax charges. This went on for a year. Specific oral discussions occurred with the Tax Division.

In and around August 1, the assistant attorney general, criminal, asks when can you return your BCCI tax indictment. Tax division people are involved in those discussions. And the Assistant Attorney General, Criminal, Mr. Mueller, says that he will make sure that there are no problems with tax, you know, other than evidence. I mean evidence is always there.

And my people went forward. We asked for an expedited. On August 2, a letter not referred to yet, I wrote to Peterson and Bruton, I believe. Peterson is head of tax; Bruton is some deputy in tax, and probably signed this August 23 letter. I wrote to them on August 2, in writing, asking for an expedited tax review onsite in Miami of the BCCI tax case. They concurred and came down.

So, exactly what it means to tell me on August 23, that there is no authorized tax investigation, is something, as a policymaker in Miami, I just do not know what it means. I do not know why it is there. I do not know what it means. And had the indictment been returned, it would not have been defective, because that is some

kind of something. Bruton went to the file, and for some motivation, looking for whatever could be said, Bruton finds that form QXZ is not in the file, so somebody did not sign off on a tax grand jury investigation and throws it in the letter to me. Essentially, leaving me to say to my assistant, Andreas, what is that about? And Andreas says, nothing, do not worry about it, or whatever. And that is where it stands.

So, I do not know why that is there.

Senator BROWN. Well, I want to take you back to a more basic question.

Mr. LEHTINEN. I am sorry. And also, right after that, it says we recently turned our attention to tax. I do not know what that is, letters for a year to the Tax Division were all about how we could indict BCCI on tax, and tax customers, and a lot of letters that you will not see, some of them are sealed. If I may, my May 13 letter regarding a BCCI customer says that this customer has the potential to crack open a major tax investigation against BCCI. It concludes by saying the BCCI tax case is a case of the greatest national urgency. That is on May 13.

So, I do not know why he would say that they only just heard about a tax case. Now, none of that has to do with the evidence, though. They have a right to challenge the evidence if they wish.

Senator BROWN. True.

Let me take you back to a more basic question. This letter uses the term: authorized tax grand jury investigation of this case.

Mr. LEHTINEN. Right.

Senator BROWN. You had an authorized grand jury investigation of this case underway, ready to proceed. Is this a term of art? Is there a grand jury that deals with investigation of all other things and a separate grand jury that is called a tax grand jury?

Mr. LEHTINEN. I am sure what that means is that to control wayward prosecutors in the field, legitimately, there is a rule that before you can proceed beyond a certain point on a tax case or before you can present any tax matters to a grand jury, which had been done now for months and months and months and months, this grand jury was receiving evidence back in 1990, not just August 1991, you are supposed to get permission of the Tax Division. That is something that assistant United States attorneys, whenever they are doing a RICO or a continuing criminal enterprise or a tax case, they have responsibility to make sure we comply with all little internal rules and regulations.

As far as I know, speaking to you today, it may very well be that that was an authorized, not only a legitimate grand jury, but that that was an authorized "tax grand jury," with whatever particular little form or approval that is being referred to, for a year.

If Andreas Rivera were here, he might say, for example, hypothetically, they never can keep their records straight. Look, I got the permission a year ago. On the other hand, he might say, gosh, I talked to those guys for a year; they never told me I was supposed to get a letter saying I can do it. They always—we did it. And I did not know I was supposed to get a particular letter.

Either way, an ongoing course of conduct for a tax investigation occurred for a long time with the full concurrence, advice and involvement of the Tax Division and the criminal division of the De-

partment of Justice, often asking us when are we going to return our tax indictment. And therefore, I do not know why they would not have either already issued the form or, if they just lost the form, or whether they did not care. Because none of the reviewers—this thing had been reviewed by several onsite reviewers, and none of them said you got a problem with a grand jury. This is a nonissue, Senator.

If Andreas did not get the permission, instead of saying, you do not have it, they should have put a P.S. on the letter and said, by the way, you forgot, you know, to have us tell you, you were allowed to this. Per this letter, you are allowed to do it, or something. I do not know why it would just say you do not have it.

Senator BROWN. That is very helpful. If I am understanding what you are saying, it is that you had a grand jury, you had an investigation, the grand jury was authorized. Tax grand jury is not necessarily a term of art. And it appears the problem here was simply a question of whether or not you had a form signed off from the Tax Division.

Mr. LEHTINEN. Absolutely, Senator. To be clear, the tax grand jury is not a separate grand jury. It is not a special grand jury. It is not differently convened. The same grand jury on one day may hear evidence on five different cases. It might be a murder, it might be a bank robbery. The next one might be drugs, and the last one was tax.

It is just an internal form, whether or not the assistant was permitted to go into taxes. Because taxes are sensitive. The Congress, legitimately, or the department, wants to make sure that everybody does not go around subpoenaing tax records. So, that is really an internal control of no external significance.

Senator BROWN. The next item, the phrase that ends that first paragraph. It says considerable additional work is necessary to bring a prosecution that is factually and legally supportable.

Now, help me. Isn't that a determination that the grand jury is supposed to concern itself with?

Mr. LEHTINEN. Well, that is what I call evidentiary. And the grand jury is the last group to determine that. If they find the evidence to be insufficient, they should vote a no true bill. The U.S. Attorney, himself, in signing the indictment, is making a statement as the officer of the court that he or she believes that the evidence is sufficient. So, I have to make that determination, and I rely upon my assistants.

Those two fact-finders, the grand jury and the prosecutor on-scene, are supplemented in some cases by departmental regulation that somebody else should look at it. In the case of tax cases, the Tax Division must review it. And they are entitled to say you lack evidence. This is pursuant to just internal rule. You lack evidence, and we want you to do something else.

We disagreed with it, but they have the right to do that.

Senator BROWN. Well, I think this is a very important point. And I hope you will comment on this to see if I am interpreting this correctly. The letter says: as the result, our review of the case which commenced in accordance with your request to Miami on Monday, August 19, 1991, we have already discussed your work prior to that, has revealed that although this case appears to

present a potential viable prosecution, in other words, he is saying that it appears to have potential for viable prosecution, he is saying considerable additional work is necessary to bring a prosecution that is factually and legally supportable.

Now, in terms of bringing a prosecution that is factually and legally supportable, your assistants who have worked on this case have said it meets that standard.

Mr. LEHTINEN. They thought it did, yes.

Senator BROWN. You have said, by signing the papers, that it met that standard.

Mr. LEHTINEN. I thought it did, yes.

Senator BROWN. They have admitted that it presents a potentially viable prosecution.

Mr. LEHTINEN. Yes.

Senator BROWN. It is the grand jury's job to make a factual determination whether it meets the standards to proceed. And by cutting off prosecution, the statute of limitation runs and it can never be brought.

Mr. LEHTINEN. Well, the grand jury does make that judgment. But, according to departmental regulations, if I do not have tax permission, Tax Division approval, I do not go forward, and I did not get it and I did not go forward.

Senator BROWN. But aren't we here, literally, at a point where the prosecution will be lost if you do not proceed immediately, because of the statute of limitations?

Mr. LEHTINEN. Well, respect to the additional part of my August 22 letter, yes. My assistant said count 6 was an important count and that they would lose it, and that, they being the people who had to try the case, they did not want to lose it.

My position usually was, the prosecutor who had to go into court and actually try the case was the one who was entitled to really decide, maybe not major issues, but if he says count 6 is important to me because I am afraid the judge is going to keep out some of my evidence unless it is a charged count, I mean, I will have to otherwise try to finagle my evidence in. And if I get the wrong judge, he will not follow a certain rule of evidence, or he is strict and we are pretty aware of what our judges would say on particular rules of evidence, that I need that count. I am going to feel naked in court if I do not have that count, we would support them. And particularly if it is just the statute of limitations, if that is the only reason you are losing the count.

The Department says in this letter, on the other hand, more or less, that the count is not as important and that you are not charging other things, and so forth. And my assistants disagreed with that.

Later, the Tax Division also offered the same hope that the statute of limitations in tax cases says something about if the person is out of the country, the statute does not run when he is out of the country. And they once said to Andreas, why don't you just claim BCCI was out of the country. But Andreas and I argued BCCI was in the country.

To all of a sudden turn around, and at some unspecified time, claim they were out of the country and not doing business in the country for a certain period of time so that our statute did not run,

we found to be disingenuous and a real legal problem. And then that was dropped, that idea for why you were really wrong that your statute was running. I do not believe that is in the letter there. That was an oral discussion that did not go very far.

Senator BROWN. Well, I have got to tell you, I have not had the prosecutorial experience that the chairman has had. When you are at the end of a statute of limitations and you have a significant count, and the prosecutor who has handling the case thinks it is a valid and important count, and the higher-ups review it and admit you have a potentially viable prosecution, to prohibit that being heard by the grand jury seems to me very strange.

Mr. LEHTINEN. Well, because of the statute problem and because of not only the fear of losing the statute but for practical purposes, I will say assistant U.S. attorneys who saw we were going to lose that count were very concerned that they would be accused of negligence later on. That is why we made it very clear in the August 22 letter.

I felt I had a duty to the assistants, if the count was going to be lost, that it was not lost—well, in any event, that it had been made clear to others what our opinion was. If others have a right to overrule that opinion, they have that right, but it was of concern to us.

So, actually, what we were hoping was we did at one point try to call that grand jury in on Tuesday. The grand jury was Friday, August 23. The statute ran, in our belief, Wednesday, August 28. I believe August 28. But it was Wednesday that the statute ran.

So, I arranged, through the Code-a-Phone and so forth and so on, that this grand jury would be available to come in Tuesday, August 27, because we thought that we might get it by then and save the count. And then we cancelled the Tuesday, August 27 grand jury as well.

And in a meeting Monday in Washington, it was said, well, maybe you can go Friday, August 30, and maybe, on the idea that they are out of the country for two days, you can somehow save that count. But we then set the grand jury for Friday, August 30, and thought we would get approval on that week, and did not get it the next week either.

Senator BROWN. You served for 3 years?

Mr. LEHTINEN. 3½ years.

Senator BROWN. How many times in this 3½ years did you have the Department of Justice call up and deny you permission to proceed with the case to a grand jury that you thought was a viable case?

Mr. LEHTINEN. I never had one—when you refer to the Department, I never had anyone from the Department call like that, other than this case.

Senator BROWN. So this, in those 3½ years, was the only case you can remember where this happened?

Mr. LEHTINEN. Yes. Let me be clear that in routine tax cases assistants dealing with the Tax Division, I don't know how many times the assistant wanted to go earlier and the Tax Division denied it—I mean, just in a conversation between the Tax Division and the assistant, which is the way that works.

But if the question is not, when did the RICO section say why don't you wait a week and redraft the RICO, if the question is how

many times did I get a phone call as U.S. attorney from the Department of Justice this was the only time I got it.

Senator BROWN. Now, let's explore what would have happened if you had gone ahead, requested the indictment from the grand jury, and they'd granted it, and upon additional work or in their words additional work is necessary to bring a prosecution, upon doing that additional work, you came to the conclusion, or your prosecutors came to the conclusion and the Department of Justice came to the conclusion that there was not sufficient evidence to go ahead with prosecution, could you have at a future time declined to go ahead with the prosecution?

Mr. LEHTINEN. If, after this date, for some reason we concluded the evidence was not sufficient, if I concluded that or my assistants did and convinced me, then we would not present it to the Department. If the Department concluded it, they would not give permission. If the grand jury concluded it, they would vote out a no true bill.

The problem with the advice that you need to do additional work, other than the fact that the assistants believed the case was ready, and believed it strongly, is that there was practically—or there was functionally speaking no additional work that could be done. You either had to take it the way you had it or not.

Frankly, the conversations were not always pleasant when it would be pointed out if you want me to do additional work you should have approved my grand jury subpoenas. I don't have overseas witnesses because I don't have grand jury power. If I don't—I mean—and so I mean there was lot of debate there, but the practical effect of being told that you should have talked to this witness in France was for some relatively irate assistants to say that's what I always thought and that's what I kept saying in the letter and that's why I wanted the grand jury subpoena.

But there was no way they could, based on advice. Everything that was said you should do additionally, the reaction of the assistants was, I can't do that. That's not practical. It's not possible. Your advice is understood, but it can't be done. Either we indict it this way or we don't indict it, and the Department had the right to say don't indict it.

Senator BROWN. I guess the point I'm concerned about is, if in looking at this case and reviewing it you came to the conclusion that additional work was necessary, it strikes me that what you faced is a choice, then, is either not going to the grand jury and losing the charge entirely because of the statute of limitations or going to the grand jury and getting an indictment and doing additional work after that.

In other words, the only way you could do additional work on this charge, faced with the statute of limitations, was indeed take it to the grand jury.

Mr. LEHTINEN. Yes, with the following comment. That's what the assistants felt. If they did not go to the grand jury now and went later, they would lose that count, which they didn't like.

It is true, and we always complied with the rule, that once indicted you cannot use a grand jury to continue to investigate that indictment. I just add that footnote so that anyone reading the record understands we always complied with that, but—

Senator BROWN. But to that point, if you get a grand jury indictment, it doesn't mean that you can't do additional work, and it doesn't mean that if that additional work indicates that the person may not be guilty, that you cannot drop the charge.

Mr. LEHTINEN. That's correct. All you cannot do is use a grand jury subpoena. Your agents interview, they go overseas and they do that. The best example is the Noriega case. It's well-known much of the evidence was generated after the indictment.

Senator BROWN. Isn't the bottomline here that the decision to not let you go to a grand jury was a decision to drop the charge, in effect?

Mr. LEHTINEN. I can only say that that was the reason for putting it in the letter. We believe that a decision to not go to the grand jury would mean a decision to drop the charge. We wanted to point out that consequence so that if they withheld their permission they understood that. They had the right to do it, but that they understood the consequence.

Senator BROWN. The paragraph at the bottom—well, the sentence on the last to the first page says our review of the remainder of the proposed indictment reveals that none of the other proposed counts will be in jeopardy of passing a statute of limitations until October 1991. Did you concur with that?

Mr. LEHTINEN. That was probably true, although we didn't indict until November. We didn't get final—Mr. Terwilliger's letter was not until November, but that was probably true. October at that point was thought to be a long ways away, that there was no way that it wouldn't have been returned by October.

At least when this letter was written that is what Bruton thought. When Bruton wrote the letter, he himself was indicating a state of mind that he was sure this was going to be resolved by October.

Senator BROWN. The following paragraph says the draft indictment contained four proposed counts against two bank subsidiaries and two employees involving—and there is something deleted—1984, 1985, 1986, 1987.

Therefore, if the 1984 count is permitted to expire to permit us to assure the factual and legal soundness of the entire indictment, the remaining 1985 through 1987 counts, that together with the conspiracy counts in count 1 will provide ample opportunity for the Government to prove at trial the full scope of the proposed defendant's actions as they relate to all of the returns. Loss of the 1984 count will obviously have no impact on the Government's ability to successfully prosecute the case. Do you agree?

Mr. LEHTINEN. My assistants disagreed and I disagreed. What the person is referring to there, and it's really a legal issue, but what the person is saying, that if you lose your first tax year but keep your second, third, and fourth, that the evidence regarding the first year will still come in because it's either inextricably intertwined or it's under the Federal Rules 404(b).

Assistants who have to try the case are always very leery of that argument, because there are judges who will say if it ain't charged in the indictment I don't want to hear the evidence, and the assistant says yes, Your Honor, but under 404(b) if you just viewed it as integral to the entire case you'd let me put it in even though it's

not charged, and the general view of those who do not try cases is to always cite to you well, I think you can get it in even if you don't charge it, and those who try cases say, but that isn't true with Judge Smith. I go before him every day, and he says I don't like 404(b) and I'm lifetime tenured and you don't charge it, you don't get it in.

That is what the argument is about. The trial lawyers are saying we lose the count number 1 and we also jeopardize our ability to get into evidence that year's evidence beyond losing the count. If we're lucky, we get a judge who lets it in. If we're not lucky, we get a judge who keeps it out, but there's no judge who will keep it out if we charge it, and that's what the writer is saying is, you don't lose anything because you will just get it in anyway.

Senator BROWN. That is helpful. One last thing on that letter, and I think perhaps the chairman has some things that I know he wants to followup on. The following paragraph says there are some important issues presented in the draft indictment that if left unresolved could seriously jeopardize any attempt to prosecute this case and potentially embarrass the Government. I assume the implication is that proceeding at this point could jeopardize the balance of the case. Tell me your view of that.

Mr. LEHTINEN. We viewed it as simply a summary of the writer's position that there was nothing special there. He was entitled to have an opinion that the evidence was insufficient. That was just kind of like a summary. If your evidence is insufficient, you jeopardize the case.

Senator BROWN. Well, help me understand how you could jeopardize.

Mr. LEHTINEN. I see nothing additional in content to this statement. There was nothing special.

Senator BROWN. The thesis is that if you bring a count that you can't prove that you cast suspicion on the balance of the counts.

Mr. LEHTINEN. Well, I don't know, really. I mean, I understand the sentence, but I just take it to be boilerplate or argument added on to any specific belief that evidence was insufficient. We don't like to lose a count, but we lose them all the time.

Senator BROWN. Thank you.

Senator KERRY. Thank you, Senator Brown. Mr. Lehtinen, we've got to move on shortly to the other panels, but I want you to help me, and I have a couple of other questions I want to ask to frame what you've been saying in the last hour or so.

In lay person's terms, what is going on here? I mean, somebody is listening to this. You're a former U.S. attorney. You had a case you wanted to bring. It happens to be a celebrated case called BCCI, which everybody knows was kind of frustrated. Here we are, seeing you, the U.S. attorney down there, struggling with the Department up here. What do we make out of this? Can you give us kind of a lay person's conclusion about what this means?

Mr. LEHTINEN. Well, Senator, that is really—anyone looking at the facts or looking at the testimony is in as good a position to reach conclusions as I am.

Senator KERRY. But I want your conclusion. You came here today and you came here to tell us something. There's a reason you want to tell us something.

Mr. LEHTINEN. Well, I came at the request of the committee, and am willing to be frank about all factual matters.

Senator KERRY. Well, do you feel frustrated? I mean, you're a U.S. attorney. Were you frustrated that you weren't able to get the job done?

Mr. LEHTINEN. The tone of the factual communications that we have talked about reflects the frustration on the part of the assistants and on my part. We don't know why certain matters were done.

The Department has the ability to take into account any number of factors, but there certainly is frustration when, for example—and I meant to answer a question fully and didn't, so I should insert here—when we are told that it is now barred by the Tampa agreement and that is the final conclusion.

The only indictment that was returned in November was of BCCI Holdings Luxembourg, and that is an entity which we, through careful review, noticed never actually appeared in Tampa. They were never served. Their lawyer never showed up. They were not parties to the plea agreement or defendants in Tampa since they didn't show up.

So the other two entities that we proposed, BCCISA and another BCCI entity which in the end were concluded to be—we didn't agree, but which were never indicted and to then turn to, in the end save the case only because you can figure out that one of the entities through probably bad advice of their lawyer didn't show up in Tampa and wasn't there to take the benefit of the plea agreement, that type of thing is frustrating, but I'm not in a position and I shouldn't really assert why these matters happened the way they did.

Senator KERRY. But they happened.

Mr. LEHTINEN. They certainly happened.

Senator KERRY. And it's pretty fair to say that you weren't exactly allowed to operate independently and pursue this the way you wanted to. Is that fair to say?

Mr. LEHTINEN. That is fair to say, but I would just add that U.S. attorneys, all U.S. attorneys have the same rules about the Tax Division applied to them.

Senator KERRY. I understand, but given what you said here—well, I will let what you said stand on its own. Is it also fair to say that it didn't particularly happen expeditiously?

Mr. LEHTINEN. Yes, that would be fair. The real problem, the subpoena problem especially.

Senator KERRY. Well, the subpoena is not in force to this day, right?

Mr. LEHTINEN. That is correct, and that did not happen expeditiously, and when we tried to do it orally or just go to London and—something that really frustrated the assistants was on November 1 when Ongaman, or a lady by that name in the fraud section told her assistants that fraud section had gone to London three times already but had lost or forgotten Miami's document request, that—it takes a lot of talking to keep assistants and agents' morale up under those circumstances.

Senator KERRY. On a subject that we touched on a little bit earlier, and I don't want you to get case-specific here, but I do want to

inquire regarding CIA contacts: How often did the CIA contact your office during the time you were a U.S. attorney?

Mr. LEHTINEN. Numerous times.

Senator KERRY. And did these contacts by the CIA relate to domestic law enforcement matters?

Mr. LEHTINEN. Generically, yes, they dealt with cases we were bringing.

Senator KERRY. Did the CIA make recommendations as to particular actions that law enforcement officials should or should not take?

Mr. LEHTINEN. Yes.

Senator KERRY. Coming outside of CIPA is not in accordance with the standards and procedures that are set up for CIA contact with law enforcement agencies, isn't that right?

Mr. LEHTINEN. Well, to be clear, it was my position that if we did anything in response to any communication from the CIA that in any way influenced our criminal justice investigation it should come through CIPA. Those were the instructions I gave to my assistants, and to my knowledge those were the instructions we carried out, so in that sense for us to have done anything in response to those communications I would have felt was improper.

Whether or not the agency is entitled to speak to us, I don't render an opinion on that. I mean, I just don't want to get into their conduct, but our conduct should be and always was we should not respond to it. The legal obligations on us would be not to accept such communication.

Senator KERRY. Was there ever an occasion where the Department of Justice attorney would call and inquire about a subpoena to one of your assistants and subsequently you would hear from the CIA regarding that subpoena?

Mr. LEHTINEN. Yes.

Senator KERRY. Did the CIA ever provide any foreign policy reasons for why you shouldn't proceed forward with the domestic law enforcement subpoena?

Mr. LEHTINEN. Generically speaking they would cite matters that a lay person would say, that's foreign policy.

Senator KERRY. Well, I'm going to reserve for the committee the possibility of either pursuing that in executive session or of referring it to the Senate Intelligence Committee for their consideration.

Mr. Lehtinen, let me just say that I appreciate your coming here and talking about this. I know it is not, obviously, pleasant for you to be talking about relationships that you had professionally that concern matters that you're less than happy about today, or that others may be less than happy about, but I do appreciate your helping us to understand the sequence of events and the sense of how things were or weren't done in the course of this investigation, which obviously has raised a lot of people's curiosity, and so I'm grateful to you.

I think the committee is appreciative of your time, and hopefully I can rely on the fact for the committee that if there is any subsequent followup needed or any further clarification of anything that we could pursue that with you. In addition, I will insert for the

record here any additional documents we receive that may be pertinent to these matters.

[The information referred to follows:]

**DOCUMENTS ON DOJ-MIAMI RELATIONS IN CENTRUST AND BCCI
INVESTIGATIONS**

CONTENTS

List of Documents

Commentary on documents relating to the following areas:

- I. Subpoena Enforcement
 - A. Critical and Urgent Nature of Subpoena Enforcement
 - B. Miami's Continuing Requests for Enforcement
- II. Proposed Indictment
 - C. Length and Status of BCCI Tax Investigation
 - D. Deviation of Departmental Review from Normal Channels
- III. Tampa Guilty Plea
 - E. Preclusion of Miami Indictment by Tampa Plea Agreement
 - F. Preclusion of Miami Indictment by Tampa Double Jeopardy

DOCUMENTS ON MIAMI-DOJ RELATIONS IN CENTRUST AND BCCI INVESTIGATIONS

LIST OF DOCUMENTS

Letter #1 -- March 26, 1991, to Harris (OIA), from Lehtinen/Sullivan, re: request to enforce BCCI subpoenas in CentTrust investigation

Letter #2 -- March 26, 1991, to Harris (OIA), from Lehtinen/Rivero, re: request to enforce BCCI subpoenas in BCCI investigation

Letter #3 -- May 13, 1991, to Bruton (Tax Div), from Lehtinen, re: requesting permission to indict Bilbeisi (BCCI customer) tax prosecution (objecting to Tax Division's declination of Bilbeisi prosecution)

Letter #4 -- August 2, 1991, to Mueller (AAG, Criminal Div, from Lehtinen, re: repeated request to enforce all BCCI subpoenas

Letter #5 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: requesting permission to indict Altamar (BCCI customer) tax prosecution and BCCI tax investigation

Letter #6 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: requesting permission to indict Wyser-Pratt (BCCI customer) tax prosecution and BCCI tax investigation

Letter #7 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: repeat requesting permission to indict Bilbeisi (BCCI customer)

Letter #8 -- August 5, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: expedited Tax Div review of BCCI tax indictment and grand jury expansion

Letter #9 -- August 19, 1991, to Urgenson (Chief, Frauds Sec, Criminal Div), from Lehtinen/Heck, re: consolidating and coordinating all document requests through DOJ Frauds Sec

Letter #10 -- August 19, 1991, to Clark (Frauds Sec, in charge of coordination document requests), from Lehtinen/Sullivan, re: consolidated document requests

Letter #11 -- August 22, 1991, to Saylor (DOJ), from Lehtinen, re: confirming AG's order not to indict BCCI and ststute of Limitations problem

Letters #11A through #11F -- August 22, 1991, to Terwilliger, Smietanka, Keeney, Bruton, Peterson, and Saylor, from Lehtinen, re: statute of limitations problem and enclosing letter #11

Letter #12 -- August 23, 1991, to Lehtinen, from Bruton (Tax Div), re: BCCI indictment

Letter #13 -- September 25, 1991, to Carey (Dep AG's Office), from Lehtinen, re: requesting decision to indict BCCI by September 27

Letter #14 -- November 6, 1991, to Lehtinen, from Terwilliger (Dep AG), re: deferring to Lehtinen on BCCI prosecution

Letters #15A and 15B -- November 8, 1991, to Mueller (AAG, Criminal Div) and Peterson (AAG, Tax Div), re: BCCI indictment scheduled for November

Document #16 -- August, 1991, proposed indictment of three BCCI entities

Document #17 -- November 14, 1991, final indictment of one BCCI entity

Memorandum #18 -- November 19, 1991, from Lehtinen, re: Lehtinen decision to seal BCCI indictment

Document #19 -- April 16, 1991, DOJ Legal Evaluation of Lehtinen/ Miami US Attorney's Office

DOCUMENTS ON MIAMI-DOJ RELATIONS IN CENTRUST AND BCCI INVESTIGATIONS

I. SUBPOENA ENFORCEMENT

A. CRITICAL AND URGENT NATURE OF SUBPOENA ENFORCEMENT

1. FALSE PROPOSITION #1 ("SUBPOENA ENFORCEMENT WASN'T CRITICAL") -- Subpoena enforcement wasn't really critical to investigations; Miami didn't make it clear how important it thought the subpoena enforcement was to their investigation

Actual Situation: Miami investigations were blocked or impeded without subpoena enforcement, and DOJ knew it; records were vital, and DOJ knew it

Letter #1 -- March 29, 1991, to Harris (DOJ OIA), from Lehtinen/Sullivan, re: two BCCI subpoenas in Centrust investigation

(i) "This matter [CentTrust] simply cannot be pursued any further in the grand jury until I receive the documentary evidence."

(ii) "The grand jury is at a standstill [CentTrust]".

(iii) "But for the initiation of appropriate enforcement proceedings, I view my ability to obtain documents and other evidence essential to my investigation [CentTrust] from BCCI to be practically impossible."

(iv) "I cannot even identify the witnesses at this point without the records."

Letter #2 -- March 26, 1991 to Harris (DOJ OIA), from Lehtinen/Rivero, re: six BCCI subpoenas in BCCI investigation

(v) "The Bank's records are vital to the success of this investigation [BCCI]."

(vi) "...[T]o ultimately make the case, I will need the Bank's records."

NOTE ON MIAMI'S GENERAKL CHARACTERIZATION OF IMPORTANCE OF BCCI INVESTIGATION -- As a general indication of the high importance Miami placed on the BCCI case and the communication of this importance to Washington, see letters #3 and #7, May 13 and August 2, 1991, re: Miami's request to indict Bilbeisi:

(vii) "[T]he BCCI investigation is one of paramount importance, and at present prosecution of Bilbeisi is one of the government's best prospects for making this case.... The case is important not only in its own right, as a blatant multi-million dollar tax fraud, but also as a steppingstone to BCCI, a tax investigation of the highest national importance." The letter says that the Bilbeisi case could be a "vehicle to crack open" the BCCI case, "an on-going investigation of the highest importance". Thus, the letter characterized the whole matter as being "of the greatest interest and significance to this district...".

2. FALSE PROPOSITION #2 ("SUBPOENA ENFORCEMENT WASN'T URGENT") -- Documents were not in danger; Miami didn't make it clear that documents might be destroyed

Actual Situation: Records had been and would be destroyed or removed without enforcement, and DOJ knew it; records could not be obtained without enforcement, and DOJ knew it

Letter #1 -- March 26

(xviii) "BCCI has been engaged in a systematic effort to evade or delay compliance with subpoenas, until such time as BCCI has left the United States and is no longer subject to the jurisdiction of the U.S. courts."

(ix) "...BCCI has acted in extremely bad faith to date and is seeking to hide behind foreign laws to evade the lawful and legitimate inquiries of at least two federal grand juries in the Southern District of Florida."

(x) "Absent immediate action, we will lose any realistic chance to obtain the desired records through the possibility of contempt sanctions."

(xi) "BCCI has been in the process of closing offices worldwide and moving business records.... I was advised BCCI would move records from the United States to evade further criminal exposure in the United States."

Letter #2 -- March 26

(xii) "The evidence and testimony obtained thus far in the course of this investigation raise an extremely strong concern that records may be hidden or destroyed."

(xiii) "...[T]he Bank's conduct to this point evidences a blatant attempt to shield itself from this investigation...."

(xiv) "In light of this and other information (including...the

statement of a bank officer...that Bank attorneys had advised him to avoid a United States Senate subpoena for testimony and records), we have a serious reason to try to protect against the destruction and concealment of records. This concern is even stronger because the Bank is about to leave the United States."

B. MIAMI'S CONTINUING REQUESTS FOR ENFORCEMENT

3. FALSE PROPOSITION #3 ("MIAMI ABANDONED ITS SUBPOENA ENFORCEMENT REQUEST") -- After March 26, Miami abandoned its effort to enforce subpoenas; Miami did not make clear its continuing desire to enforce subpoenas; DOJ thought Miami was satisfied after permission was given in March to enforce two subpoenas

Actual Situation -- Miami made repeated requests (in April, May, June, July, August, September, and October) to enforce grand jury subpoenas, both orally and in writing

Letter #4 -- August 2, 1991, to Mueller, from Lehtinen, re: repeated request to enforce all BCCI subpoenas

(xv) "I request that reconsideration be given to approving the two requests of this Office (both dated March 26, 1991) to permit me to move for compulsion orders enforcing subpoenas duces tecum issued previously to BCCI."

(xvi) "I request that I be permitted to enforce all subpoenas as requested therein [March 26th requests]."

Letter #9 -- August 19, 1991, to Urgenson (DOJ Frauds Section Chief), from Lehtinen/Heck, re: consolidating and coordinating all document requests through DOJ Frauds Section (enclosed letters #1, #2, and #4)

(xvii) "This office recently asked the Criminal Division of the Department of Justice to reconsider approving two March 26, 1991 requests for this office to be permitted to seek 'Bank of Nova Scotia' compulsion orders enforcing subpoenas duces tecum previously issued to BCCI, see correspondence attached as Attachment A. We continue to press for that reconsideration, with an eye to exerting maximum compulsion power to obtain BCCI records as soon as possible."

(xviii) "'Nova Scotia' enforcement [of grand jury subpoenas] has proven to be the most effective weapon we have to obtain BCCI's records, and we do not wish to abandon it."

Letter #10 -- August 19, 1991, to Clark (DOJ Frauds Section, appointed in charge of coordinating document requests), from Lehtinen/Sullivan, re: consolidated document requests (enclosed letters #1, #2, #4, and #9)

[See also, "Note Regarding Oral Communication", in Proposition #4, below.]

4. FALSE PROPOSITION #4 (MIAMI SUBSTITUTED A CONSOLIDATED REQUEST)

-- After August 2, Miami substituted "consolidated" document requests through the DOJ Frauds Section in place of its request to enforce subpoenas

Actual Situation -- "Consolidated" records requests by DOJ Frauds Section were not an acceptable alternative to subpoena enforcement and were never accepted as an alternative or substitute by Miami

Letter #9 -- August 19

(xix) "This office wishes to participate in this consolidated request.... However, this office also wishes to reserve the ability to use all other lawful means of securing documents from BCCI, and I am concerned that the consolidated request not suggest otherwise, either directly or by implication." [Thereafter, the letter referred to Miami's request for reconsideration to enforce grand jury subpoenas, and stated that "[w]e continue to press for that reconsideration".]

(xx) "We are also concerned that the 'consolidated request' vehicle not slow the production process.... We experienced a history of stalling tactics by BCCI. [I]t illustrates that...the maximum coercive power -- in this case, grand jury process backed by 'Novia Scotia' enforcement -- is necessary to prompt production. Our time constraints are more urgent now."

(xxi) "This office considers that document production from BCCI should be sought by all legal means. In hopes that the 'consolidated request' process may prove fruitful, we join in it. At the same time, we wish to continue pressing forward with other, more compulsive, means for document production, including as discussed above."

(xxii) "We are most concerned that our participation in the consolidated request not be interpreted as a concession that more compulsive production will not be sought...."

NOTE REGARDING ORAL COMMUNICATION -- All written communications were accompanied, both before and after written dates, by oral communications, both by telephone and in person in Washington meetings. No one in DOJ ever received a letter without being spoken to by the Miami person who wrote the letter, and by others from Miami as well.

Lehtinen orally requested subpoena enforcement of Mueller: (a) prior to the August 2nd letter; (b) at least twice thereafter in August (including in a Washington meeting with Barr, Mueller, and

other DOJ personnel, wherein both Lehtinen and Miami AUSAs separately raised the issue with Barr listening, stating that Centrust and other aspects of BCCI could not go forward without subpoena enforcement); and (c) at least five times in September and later (including Washington meetings). (Lehtinen may have raised the issue orally with Mueller more than twice this number of times, this note being a minimum recitation.) Lehtinen also made the oral request to several other DOJ officials on various occasions, including Urgenson (head of Frauds Section) and others.

AUSAs Heck, Rivero, Sullivan and Butler constantly raised the issue orally as well, by telephone and in Washington meetings.

Subpoena enforcement requests were made orally every month from March to October, 1991.

For example, in November an AUSA wrote a summary memo to Lehtinen, as follows:

"Foreign Documents"

"SUMMARY"

"We need records of accounts from England, France, Luxembourg, Grand Cayman, Panama, Abu Dhabi, Switzerland, Jordan, Bahamas and Netherlands both to support our indicted cases and to make additional cases against unindicted customers. Some customers simply will never be indicted without the foreign records.... We have received no foreign documents since June, 1991 after Novia Scotia litigation limited to Panama and Abu Dhabi. We have not been told whether we can or cannot have approval for further Novia Scotia litigation...."

"In general, OIA blames the Frauds Section for the lack of progress on U.K. documents and the decision on Novia Scotia authority saying that the Frauds Section only promotes their interests...."

"Novis Scotia Authority"

"We still have not been told that we can or cannot have Novia Scotia authority to enforce the subpoenas.... In August and September, 1991 Task Force representatives stated they were trying to work out cooperative agreements with the Liquidators' counsel...."

"U.K. records"

"We told OIA in June and July that we needed documents and to interview witnesses in the U.K. and were told it was premature.... We still have not gotten even a written request for U.K. records approved out of OIA.... I was also told by a DOJ Frauds Section

attorney that Peter Clarke has been to London at least three times and has not delivered the CenTrust/BCCI document requests to the U.K. authorities because he 'forget'" [Clarke is the DOJ Frauds Section coordinator of document requests.]

"CHRONOLOGY REGARDING ATTEMPTS TO OBTAIN FOREIGN RECORDS

"June 1991 -- Sanctions were awarded [on the two countries permitted].... However,...approximately four files were held back in Abu Dhabi."

"June-July, 1991 -- Requests for Novia Scotia authority for additional countries requested. It has been repeatedly promised as imminent and then nothing happens. During this period, we meet face to face with OIA lawyers and tell them the countries where we believe records exist...."

"August 7-8, 1991 -- Andres and I meet two OIA lawyers in Miami to discuss our request. They state they will prepare a request for U.K. documents.... We...return it to them on September 20."

"Late September, 1991 -- An OIA lawyer calls asking some questions and says she is finalizing UK request."

"November 1, 1991 -- I call Joanne Ongamn in the Frauds Section based on Carver memo appointing her coordinator of foreign contacts. She says that BCCI CenTrust records requests have never been taken to U.K. on last three trips. She also says she knows nothing of our request for U.K. documents...."

II. PROPOSED INDICTMENT

C. LENGTH AND STATUS OF BCCI TAX INVESTIGATION

5. FALSE PROPOSITION #5 ("MIAMI SHOWED INTERESTS ONLY RECENTLY IN BCCI TAX MATTERS; NO TAX INVESTIGATION") -- Miami began to look at tax violations by BCCI only shortly before August 23; Miami did not have an authorized tax grand jury investigation (see August 23, 1991 letter by Bruton)

Actual Situation -- Miami was always investigating BCCI and its customers/officials for tax violations, and both DOJ Tax Division (including Bruton) and DOJ Criminal Division knew it

Letter #2 -- March 26, 1991

(xxiii) "The United States Attorney's Office for the Southern District of Florida, in conjunction with the Internal Revenue Service, is conducting a grand jury investigation into allegations of tax evasion and drug money laundering and conspiracy involving BCCI and various of its customers."

Letter #3 -- May 13, 1991, to Bruton (DOJ Tax Division), from Lehtinen, re: requesting permission to indict Bilbeisi (BCCI customer) tax prosecution (objecting to Tax Division's declination of Bilbeisi prosecution) and BCCI tax investigation

(xxiv) "The case [Bilbeisi] is important not only in its own right, as a blatant, multi-million dollar tax fraud, but also as a steppingstone to BCCI, a tax investigation of the highest national importance." [This letter also referred to the investigation of "institutionalized money laundering by BCCI", money laundering being a generic term for financial transactions to hide the existence, movement, or source of money, which would include laundering actions to evade tax laws.]

Letter #5 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: requesting permission to indict Altemar (BCCI customer) tax prosecution and BCCI tax investigation

(xxv) "Mr. Altemar is a cooperating witness in the BCCI tax investigation being conducted in this district."

Letter #6 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: requesting permission to indict Wyser-Pratt (BCCI customer) tax prosecution and BCCI tax investigation

(xxvi) "Ms. Wyser-Pratt is a customer-target in the BCCI tax investigation being conducted in thid district."

Letter #7 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: repeat requesting permission to indict Bilbeisi (BCCI customer) tax prosecution and BCCI tax investigation

(xxvii) Letter #7 repeats request to prosecute Bilbeisi "as a steppingstone to BCCI, a tax investigation of the highest national importance".

Letter #8 -- August 5, 1991, to Peterson (AAG, Tax Division) and Mueller (AAG, Criminal Div), from Lehtinen, re: expedited Tax Div review of BCCI tax indictment and grand jury expansion

(xxviii) Letter #8 refers repeatedly to "the BCCI tax investigation".

6. FALSE PROPOSITION #6 ("NO AUTHORIZED TAX GRAND JURY") -- Miami did not have an "authorized tax grand jury" investigation (see August 23 letter by Bruton)

Actual Situation -- For more than a year Miami had pursued (with DOJ knowledge, including Tax Division and Bruton) a BCCI tax case in a grand jury investigation as a "Title 18 conspiracy" (Title 18, general criminal code, section 371, general conspiracy statute) to violate tax laws, which is not a "Title 26" tax violation (tax code) -- which explains why Miami had not sought special grand jury authorization for a Title 26 tax investigation on BCCI; Title 26 violations (such as filing a false tax return) against BCCI customers and others were in fact specially authorized grand jury investigations for more than a year, with the specific goal (known to DOJ, including Tax Division and Bruton) of making the BCCI tax case; when Miami sought to include Title 26 violations against BCCI in addition to the Title 18 conspiracy, authorization to expand grand jury was sought in writing

Letters #3, #5, #6 and #7 -- May 13 and August 2, 1991

(xxix) These letters to the Tax Division all refer to "the BCCI tax investigation", assuming prior knowledge of DOJ of the tax investigation, and there was no objection from Tax Div/DOJ of "lacking authorization", etc.

Letter #2 -- March 26, 1991

[See (xxiii), above: USAO, in conjunction with IRS, is "conducting a grand jury investigation into allegations of tax evasion...involving BCCI...."]

Letter #8 -- August 5, 1991

(xxx) Requests review of "the BCCI tax investigation", assuming prior knowledge by DOJ of the tax investigation.

(xxxi) "I request joint approval of both the expansion of the investigations and final approval of prosecutions...." [That is, this letter includes "expansion" of aithorized BCCI grand jury investigation to additional tax violations, in addition to review of the indictment itself]

D. DEVIATION OF DEPARTMENTAL REVIEW FROM NORMAL CHANNELS

7. FALSE PROPOSITION #7 ("NORMAL CHANNELS OF EVIDENTIARY REVIEW RESULTED IN ATTORNEY GENERAL'S AUGUST ORDER NOT TO INDICT") -- Other than expediting its review, the Department of Justice and its Tax Division followed normal channels, procedures, and standards in its August review of Miami's BCCI indictment; Tax Division's normal evidentiary review was the cause of indictment's delay

Actual Situation -- Tax Division did not follow normal review procedures (other than on-sute, expedited review, which itself is not unusual), in that it did not communicate its (apparent) evidentiary concerns to the indicting district in the normal fashion and did not communicate its (apparent) disapproval to the indicting district; instead, Tax Division went directly to the Attorney General's Office, without speaking with the indicting district, to get "political" approval/guidance before communicating with the indicting district; the AG's Office (not Tax Division) directly ordered the indictment not returned, which is unnecessary and suspect because Tax Division itself need only withhold approval of the indictment (so informing the indicting district orally by phone) in order to stop the indictment and thereby vindicate its evidentiary concerns; the suspect insertion of the AG's Office and the elimination of the Tax Division in the directive not to indict made it essential for the integrity of the process and protection of all prosecutors in Miami that the AG's order be confirmed and memorialized in writing; only after the indicting district confirmed in writing that the AG had ordered the indictment not returned did the Tax Division communicate its (apparent) evidentiary objections to the indicting district for the first time; thereafter, the Tax Division's letter not only outlined its (apparent) evidentiary concerns, but also contained numerous superfluous, misleading, and/or inaccurate comments which appear directed at creating and substituting retroactively a justification for the unexplained, out-of-channels order of the previous day; in the end, the indictment in November was based on exactly the same evidence and was substantially the same Title 18/371 general conspiracy as proposed in August

Letter #11 -- August 22, 1991, to Saylor (DOJ), from Lehtinen, re: confirming Barr's order not to indict and statute of limitations problem; and Letters #11A, #11B, #11C, #11D, #11E, and #11F -- to Terwilliger, Smietanka, Peterson, Bruton, Keeney, and Saylor, from Lehtinen re: containing letter #11 and outlining statute of limitations problem

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(xxxii) "This is to confirm the telephone call which you placed to me this mernin, in which you indicated that Acting Attorney General William Barr has directed me not to present the indictment of BCCI to the grand jury tomorrow (Friday, August 23rd), as had been scheduled."

[This letter shows an unexplained, out-of-channels order regarding an indictment. Whether or not Tax Division had "concerns", this letter (and the AG's order which it reflects) demonstrates that BCCI decisions were not left to be decided on such neutral standards of evidence by those assigned evidentiary review responsibility (i.e., the Tax Division). Instead, BCCI decisions were "politicized" so that Tax Division wouldn't make a decision and speak to the indicting district without first getting clearance from the political level of the Department. The point is not whether Tax Division really had "concerns", but rather that Tax Division wasn't the decision-maker at all and wasn't allowed to communicate it -- the issue was removed from Tax and sent to political levels.]

Letter #12 -- August 23, 1991, to Lehtinen, from Bruton, re: BCCI indictment [Tax Division did not communicate its (apparent) objections, either orally or in this letter, until after the AG's non-indictment order was confirmed in writing, letter #11; misleading statements in this latter are discussed elsewhere.]

Letter #15A and #15B -- November 8, 1991, to Mueller (AAG, Criminal Div) and Peterson (AAG, Tax Division), from Lehtinen, re: final coordination of BCCI indictment scheduled for November

(xxxiii) "This [indictment for November] is substantially the same document we presented to Mr. James Bruton and other members of the Department in August, 1991."

NOTE ON ORAL DISCUSSIONS -- In a Washington meeting on August 26, 1991 (Monday following the AG's Thursday order not to indict), with Barr, Mueller, Bruton, numerous other DOJ officials, Lehtinen, and Miami AUSAs, Bruton outlined Tax Division's "concerns" but stated that such concerns could probably all be met that week, in time to return an indictment on Friday, August 30th. Thereafter, Miami prepared to return the indictment on August 30th, but Tax Division personnel (including Bruton) werewas unavaible to speak with Miami and the indictmet was not returned..

At this same meeting, the Miami AUSAs and Lehtinen both

requested again that Miami be permitted to enforce grand jury subpoenas but permission was not given. The subpoenas were described as essential and critical, and it was stated that the cases (Centrust and other aspects of BCCI) could not move forward without enforcement.

NOTE ON IDENTITY OF EVIDENCE AND CONSPIRACY CHARGE BETWEEN AUGUST TO NOVEMBER -- The Title 18/371 general conspiracy charge filed in November, 1991, was substantially the same charge as proposed in August, with littler change (except for deleting two BCCI entities due to plea agreement and double jeopardy problems); the evidence was exactly the same as in August; see letters #15A and 15B.

8. FALSE PROPOSITION #8 ("NORMAL CHANNELS OF EVIDENTIARY REVIEW WERE RE-ESTABLISHED QUICKLY AND RESULTED IN NOVEMBER DECISION TO DEFER TO LEHTINEN") -- After the AG's order on August 22nd, the Tax Division re-assumed its normal review responsibility. The involvement of the political level of DOJ was temporary and thereafter Tax Division reviewed evidentiary sufficiency and other issues regarding the Miami BCCI indictment in the normal fashion.

Actual Situation -- Although Tax Division discussed evidentiary issues with Miami periodically, control of the Miami indictment was maintained at political levels in DOJ (not returned to Tax Division); Miami was told that Tax Division did not control the decision-making (approval or disapproval); Carey, Deputy AG's Office, was named to control the indictment; Miami tried to get Carey to make a decision (approval or disapproval) on the state of the evidence as it existed, but no decision was made; in the end, Terwilliger wrote a letter deferring to Lehtinen (shifting total responsibility to Lehtinen) in November, following (within 48 hours) stinging Time Magazine and NY Times (Safire) articles; in the end, the indictment in November was based on exactly the same evidence and was substantially the same Title 18/371 general conspiracy as proposed in August and September

Letter #13 -- September 25, 1991, to Carey (Deputy AG's Office), from Lehtinen, re: requesting decision to indict BCCI on September 27

(xxxiv) "We await your decision on the prosecution we have proposed to you of BCCI...." [Demonstrates that Tax Division was divested of its review authority.]

(xxxv) Miami requesting approval "notwithstanding the lack of approval by Tax Division". "In essence, I was appealing the decision of the Tax Division, although the Tax Division had been kind enough not to formally decline the case."

[Demonstrates ambiguity and stalling by DOJ; avoidance of responsibility by DOJ, wherein no one in DOJ will actually decline

but no one will give approval either -- classic obfuscation; Tax Division not the controlling unit and not conducting evidentiary review and deciding in normal fashion.]

(xxxvi) "As you know, in light of the Tax Division's preliminary decision not to approve the prosecution of BCCI or its bankers under 7206(2) [Title 26], we revised our indictment to delete those charges. However, the final decision regarding this issue is particularly critical because the statute of limitations will bar an additional count under 7296(2) on October 17, 1991."

[Demonstrates that Miami could not get a decision out of DOJ no matter what it did in response to supposed DOJ concerns. E.g., Miami would drop 7206(2) charges, leaving only the Title 18 general conspiracy count, if that was the concern; but neither Tax Division or the Deputy's Office would decide officially to approve the conspiracy count even without the 7206(2) charges, or even decide officially to drop the 7206(2). The "7206(2) issue" and other issues were used just to confuse and stall, to avoid moving forward one way or the other. Note that final indictment returned in November consists of the Title 18 general conspiracy charge, which Miami proposed to return in September without the Title 26/7206(2) charges, and there was no change in evidence whatsoever between August and November; the November indictment could have been returned in August or September -- the evidence stayed the same.] Letter #13 -- November 6, 1991, to Lehtinen, from Terwilliger, re: BCCI indictment

Letter #14 -- November 6, 1991, to Lehtinen, from Terwilliger, re: deferring to Lehtinen on BCCI prosecution

(xxxvii) [Letters #13 and #14 demonstrate that the control of the Miami indictment was always in the hands of the political level of the DOJ not Tax Division.]

NOTE ON IDENTITY OF EVIDENCE AND CONSPIRACY CHARGE BETWEEN AUGUST TO NOVEMBER -- The Title 18/371 general conspiracy charge filed in November, 1991, was substantially the same charge as proposed in August (except for deleting two BCCI entities due to plea agreement and double jeopardy problems) and September, with little change; the evidence was exactly the same as in August and September; see letters #15A and 15B.

NOTE ON ORAL DISCUSSIONS -- Tax Division frequently said that it provided "review notes" to Deputy AG's Office (e.g., Carey or others), but Tax would not provide any copies to Miami, despite requests by AUSAs and Lehtinen. Miami could not understand (and never did understand) why Miami was not allowed to see these "notes", which supposedly outlined Tax Division's "concerns". Only after Terwilliger's November 8th letter (deferring to Lehtinen), followed by more, quite adamant demands by Lehtinen, did Bruton (Tax) provide such copies (in the last few days before the November

indictment).

9. FALSE PROPOSITION #9 ("DOJ THOUGHT LEHTINEN LACKED JUDGEMENT; LEHTINEN WAS UNRELIABLE") -- DOJ thought Lehtinen and the Miami Office lacked judgement and could not be relied upon to make legal/evidentiary judgments; DOJ could not defer to Lehtinen's legal views; Lehtinen would seek publicity and act irresponsibly in an effort to save his nomination

Actual Situation -- DOJ took the extraordinary step of not only dererring to Lehtinen's judgment in November in the BCCI tax case, but also of substituting Lehtinen as the final decision-maker; normally, Tax Division has evidentiary review authority, while herein Tax Division never issued any decision at all; the Deputy AG's Office had been given review responsibility, but deferred to Lehtinen; in short, Tax Division and Deputy AG's Office (as well as AG's August order) just delayed and stalled Lehtinen, with DOJ putting the whole responsibility on Lehtinen in the end; if DOJ thought Lehtinen was unreliable, it would not have shifted normal DOJ review authority to him in the end; political considerations had stalled matters at DOJ so in fact DOJ could not afford to assume responsibility for its own acts, thus first blocking Lehtinen (later saying Lehtinen was unreliable) and then in the end shifting total responsibility to Lehtinen ("...defer to you prosecutorial judgement on this matter...") so as to to avoid responsibility for its stalling; in the end, the November indictment was based in exactly the same evidence as the proposed August indictment and the Title 18/371 conspiracy charge was essentially the same, vindicating Lehtinen/Miami's judgement; instead of seeking publicity upon indicting BCCI in November, Lehtinen sealed the indictment on his own authority; DOJ's own tri-annual evaluation of Lehtinen's had given him a very high, outstanding report.

Letter #14 -- November 6, 1991

(xxxviii) "I am therefore prepared to defer to your prosecutorial judgement on this matter...."

Memorandum #18 -- November 16, 1991, from Lehtinen, re: Lehtinen's decision to seal BCCI indictment

(xxxix) Demonstrates that Lehtinen was not seeking publicity, instead, Lehtinen sealed indictment on his own decision, without suggestion by DOJ, in order to possibly apprehend a defendant; indictment remained sealed until December plea agreement in Washington, which plea agreement was negotiated by DOJ without consulting with Miami (when agreement was discussed and shown to US Attorneys for first time, DOJ said trying to change it at all would be very difficult and not wise).

Document #19 -- March 26, 1991, DOJ Legal Evaluation of Lehtinen/
Miami Office

(iL) "Lehtinen has accomplished remarkable and positive changes in the District."

(iLi) "Dexter Lehtinen...came into an office, which according to the last Executive Office Legal Evaluation, had significant problems. ...[I]t appears to the evaluation team that he has turned the office around."

(iLii) "The Chief Judge...said 'it is hard to imagine a better operated office in America'."

NOTE ON IDENTITY OF EVIDENCE AND CONSOIRACY CHARGE BETWEEN AUGUST TO NOVEMBER -- Lehtinen's judgement was vindicated by the fact that the Title 18/371 general conspiracy charge filed in November, 1991, was substantially the same charge as proposed in August (except for deleting two BCCI entities due to plea agreement and double jeopardy problems) and September, with littler change; the evidence was exactly the same as in August and September; see letters #15A and 15B.

III. TAMPA GUILTY PLEA

E. PRECLUSION OF MIAMI INDICTMENT BY TAMPA PLEA AGREEMENT

10. FALSE PROPOSITION #10 ("TAMPA PLEA AGREEMENT DID NOT BIND ANY OTHER DISTRICT") -- The Tampa plea agreement, in which Tamps waived right to prosecute all BCCI entities for other crimes, did not bind any other U.S. Attorney's Office and did not preclude prosecutions by other districts

Actual Situation -- Miami was asked, but explicitly chose not to join in the Tampa plea agreement in 1990. In August 1991 Miami sought to indict three BCCI entities, but in early September, 1991, Tax Division stated that Miami could not indict any BCCI entities at all, due to the Tampa plea agreement not to indict further being binding on Miami; Miami objected to Tax Division, Criminal Division, and Deputy AG's Office (including Mueller); Miami, in reviewing this "plea bar" problem with Tampa, determined that one BCCI entity (BCCI Holdings (Luxembourg)) had not been served in Tampa and never appeared in Tampa, but DOJ still maintained that Miami could not indict this entity either because Tampa had promised in the agreement not to ever indict it (even though it had not appeared); Miami is eventually allowed to indict the entity that never appeared in Tampa (on essentially the same Title 18 conspiracy as presented in August and on the same evidence), but DOJ adhered to the position that Miami cannot indict any entity which pled guilty in Tampa (barring new indictments permanently)

Document #16 -- Proposed Indictment of three BCCI entities by Miami, August 22, 1991

(iLiiv) Three entities named: Bank of Credit and Commerce International (SA); Bank of Credit and Commerce International (Overseas), Ltd; and BCCI Holdings (Luxembourg) S.A.

Letter #8 -- August 5, 1991

(iLiv) Names same three entities as Document #16, above

[Document #16 and Letter #8 show that Miami intended in August to indict three BCCI entities for Title 18, section 371, general conspiracy to violate tax laws]

Letter #13 -- September 25, 1991

(iLv) "In our last discussions with the Tax Division, they were researching whether the circumstances of the dismissal of BCCI Holdings from the litigation in Tampa barred prosecution by this

District." [The "circumstances" referred to therein are the Tampa promises not to ever indict BCCI Holdings even though BCCI Holdings did not sign the plea agreement or plead guilty.]

[Letter #13 reflects, very politely, that DOJ Tax Division still objects to indicting even the BCCI entity which did not plead guilty in Tampa (BCCI Holdings (Luxembourg)), and that the two BCCI entities that did plead guilty in Tampa have been eliminated (DOJ Tax Division would not approve their indictment.)

Letter #15A and #15B -- November 8, 1991, to Mueller (AAG, Criminal Division) and to Peterson (AAG, Tax Division), re: BCCI indictment scheduled for November

(iLvii) "This [the indictment for November 15] is substantially the same document we presented to Mr. James Bruton and other members of the Department in August, 1991".

[Demonstrates that there were no evidentiary reasons for dropping two BCCI entities, since the Title 18/371 general conspiracy charge remains essentially the same; the evidence did not change at all between August and November and the evidence was identical against all BCCI entities; only the Tampa plea agreement and double jeopardy barred their indictment.]

Document #17 -- Indictment of BCCI Holdings (Luxembourg) by Miami, November 14, 1991

(iLviii) Document #17 and letter #14 show that Miami was not permitted to indict any BCCI entity which pled guilty in Tampa; thus, this indictment drops two BCCI entities from the original August indictment; Miami always wanted to indict all BCCI entities but was overruled.

F. PRECLUSION OF MIAMI INDICTMENT BY TAMPA DOUBLE JEOPARDY

11. FALSE PROPOSITION #11 ("DOUBLE JEOPARDY FROM TAMPA INDICTMENT DID NOT BAR OTHER PROSECUTIONS") -- The Tampa indictment was carefully drawn and well-defined in scope so that double jeopardy did not bar other prosecutions, especially tax prosecutions, after the convictions by guilty pleas in Tampa

Actual Situation -- In September, 1991 (a few weeks after Miami's first planned indictment date), DOJ Tax Division stated that double jeopardy barred Miami's indictments of all BCCI entities (as a separate concept from the government's promises in the plea agreement). This issue thereafter developed similar to issue #10 above (the plea agreement), DOJ eventually barring indictment of two BCCI entities by double jeopardy and permitting the indictment of a third entity only because Miami determined that that entity (BCCI Holdings (Luxembourg)) did not enter an appearance in Tampa

(wasn't convicted). DOJ now concluded that the Tampa indictment was overbroad, with tax aspects mentioned casually in its money laundering indictment, without ever having been submitted to Tax Division for review, so that new tax charges were precluded.

[Same documents as in Issue #10 above]

Note on Tax Components of Tampa Indictment: DOJ Tax Division stated in a Washington meeting in early September that the Tampa indictment mentioned "tax" acts in its drug money laundering conspiracy, and therefore should have been submitted to Tax Division for review and approval prior to indictment in 1988. However, Tax Division stated that the Tampa indictment had never been submitted or reviewed by Tax Division at any time and therefore Tax Division could not be responsible for the overbroad indictment which now precluded a tax indictment in Miami.

END



Department of Justice

United States Attorney

Southern District of Florida

U.S. Supreme Court
Miami, Florida 33130

March 26, 1991

BY TELECOPIER & MAIL

John Harris, Esq.
Assistant Director
Office of International Affairs
Department of Justice
Room 5100
Bond Building
1400 New York Avenue, N.W.
Washington, D.C. 20530

Re: Subpoena Duces Tecum Issued to Bank of Credit and
Commerce International

Dear Mr. Harris:

I write to request the approval of the Office of International Affairs to commence grand jury subpoena enforcement proceedings, if such becomes necessary, against Bank of Credit and Commerce International ("BCCI"), pursuant to In Re Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982), in connection with two grand jury subpoenas duces tecum served upon BCCI. The subpoenas implicate certain records believed to be housed by BCCI either in England or France, or both.

I am conducting a grand jury investigation in the Southern District of Florida into numerous allegations of financial irregularities occurring at CentTrust Bank of Miami, Florida. One such allegation involves the suspected "parking" of \$25 million in CentTrust subordinated debentures at BCCI in 1988. The purchase of the bonds by BCCI, and BCCI's subsequent resale of the debentures to CentTrust at par within a few months, appears, from the

information developed to date, to have been orchestrated by CentTrust and its majority shareholders, David L. Paul and Ghaith Pharoan, to ensure the success of the larger \$150 million debt issuance and further to increase artificially CentTrust's publicly reported capital structure. The parking, if proven, appears intended to have been designed to mislead federal regulators, the investing public as well as the other investors participating in the May, 1988 sub-debt issuance.

A copy of the subpoenas are attached. The subpoenas seek primarily any and all documents pertaining to BCCI's purchase and later sale of the debentures. I also enclose a letter I have sent to Ronald Liebman, Esq., outlining the difficulties I have experienced with counsel for BCCI. The purpose of the subpoena returnable this Friday, March 29, is to at least get BCCI to commit on the record regarding: (1) the location of the subject documents; (2) the claimed applicability of foreign laws impeding BCCI's ability to comply; and (3) BCCI's refusal to comply with the subpoena. I understand that action to enforce compliance with the subpoena must await the approval of the Office of International Affairs. My goal, however, is to proceed with appropriate enforcement activity on April 5, 1991, to parallel enforcement of subpoenas issued by Assistant United States Attorney Andres Rivero of this Office. In separate correspondence to you, AUSA Rivero has outlined similar difficulties he has experienced with BCCI in an unrelated grand jury investigation.

I have concluded, based upon BCCI's activities to date as outlined in my correspondence to Mr. Liebman, as well as upon information received from other sources, that BCCI, while promising cooperation, has been engaged in a systematic effort to delay and evade compliance with subpoenas until such time as BCCI has left the United States and is no longer subject to the jurisdiction of the U.S. courts. The planned abandonment of all BCCI presence in the United States is believed to be scheduled for the first week of May, 1991. But for the initiation of appropriate enforcement proceedings, I view my ability to obtain documents and other evidence essential to my investigation from BCCI to be practically impossible.

Pursuant to my understanding of the factors to be taken into account by the Office of International Affairs, I report the following:

1. AVAILABILITY OF ALTERNATIVE METHODS FOR ENFORCEMENT

I have no present idea where precisely the records I am seeking are located. As indicated above, the records may be located in either England or France, or both.

I have reason to believe, however, based on information supplied to me, that BCCI has been in the process of closing offices worldwide and moving business records, possibly to Abu Dhabi. This is corroborated in part by Mr. Liebman, who has

represented to me that BCCI has recently been acquired by new Saudi owners who are now engaged in the process of "reconstituting" BCCI into a new banking entity, in view of the civil and criminal difficulties BCCI has experienced in the United States and elsewhere.

To the extent that the documents are located in England, I understand no MLAT exists for non-drug cases, and a recent unrelated request for records pursuant to letters rogatory has been returned to me by British law enforcement officials with an advisory opinion that the records could not be obtained if they were sought pursuant to a grand jury investigation (as opposed to pursuant to an active, charged criminal case).

My familiarity with French procedures is lacking. However, I am not confident that I could obtain the desired documents, even assuming they are in France, with the expedition called for by the current pace of my grand jury investigation. Further, I am concerned about BCCI's possible ability to stall enforcement of letters rogatory or treaty requests in France, or to obtain discovery into my investigative theories. Moreover, to the extent that I would be called upon to make a prima facie showing of criminal activity, I am not confident of my ability to do so without access to foreign records.

2. INDISPENSABILITY OF THE RECORDS

This matter simply cannot be pursued any further in the grand jury until I receive the documentary evidence. I anticipate that I will need to contact, through OIA, foreign witnesses. I cannot even identify the witnesses at this point without the records. The grand jury is now at a standstill.

3. NEED TO PROTECT AGAINST THE DESTRUCTION OF RECORDS

During an interview last year with Amer Lohdi, formerly an associate of Ghaith Pharoan, who himself is major borrower of BCCI and who reportedly is practically a BCCI insider, I was cautioned that BCCI was extremely concerned with its future criminal exposure in the United States and was planning to abandon its activities here primarily for that reason. I was advised that BCCI would seek to move records from the United States to evade further criminal exposure in the United States. I was also advised, from an independent source (which has not been corroborated to date), that destruction of BCCI records in its New York offices was occurring. I refer you as well to the correspondence to you of this date by AUSA Rivero regarding the information he has received from other sources in this regard.

I thus request the approval of OIA to file, if necessary, a motion with the district court in Miami to compel compliance with the subpoenas. Although not explicitly stated in my letter to Mr. Liebman, I believe that BCCI has acted in extreme bad faith to date and is seeking to hide behind foreign law to evade the lawful and

legitimate inquiries of at least two federal grand juries in the Southern District of Florida. Absent immediate action, we will lose any realistic chance to obtain the desired records through the possibility of contempt sanctions.

I look forward to hearing from you.

Very truly yours,

DEXTER W. LEHTINEN
UNITED STATES ATTORNEY



BY: ALLAN J. SULLIVAN
ASSISTANT UNITED STATES ATTORNEY

cc: Andres Rivero, AUSA
Cheryl Bell, AUSA



AR:sev

U.S. Department of Justice

United States Attorney

Southern District of Florida

155 North Miami Avenue, Suite 200
Miami, Florida 33136

March 26, 1991

By Mail and Telefax

John Harris, Esq.
Assistant Director
Office of International Affairs
United States Department of Justice
Room 5100
Bond Building
1400 New York Avenue, N.W.
Washington, D.C. 20530

Re: Six Subpoenas Issued to the Bank of Credit and
Commerce International ("BCCI")

Dear Mr. Harris:

I write for the purpose of requesting authorization from your office to undertake, if necessary, litigation pursuant to In Re: Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982), cert. denied, 103 S.Ct. 3086 (1983), with regard to certain subpoenas previously issued to the Bank of Credit and Commerce International ("BCCI" or the "Bank"). This letter sets forth briefly the background of the investigation into the activities of BCCI and its customers and the reasons why each of the Department's criteria for Nova Scotia litigation are met in this situation. As discussed below, the Bank's conduct to this point evidences a blatant attempt to shield itself from this investigation through stalling tactics and the invocation of unspecified foreign bank secrecy laws.

Background:

The United States Attorney's Office for the Southern District of Florida, in conjunction with the Internal Revenue Service, is conducting a grand jury investigation into allegations of tax evasion and drug money laundering and conspiracy involving BCCI and various of its customers. BCCI is a target of this investigation. In furtherance of the investigation, six subpoenas were served on the Bank between January 9, 1991, and January 12, 1991. Copies of these subpoenas are attached as Composite Exhibit A. The subpoenas call for the banking records of certain BCCI customers and the personnel records of certain BCCI employees.

At the request of one of BCCI's counsel, this Office agreed to permit responses to all of the subpoenas to be made before the grand jury on February 22, 1991. On February 20, 1991, Ronald Liebman, Esq., counsel to BCCI, contacted me by telephone, advised that many of the records called for by the subpoenas were overseas, and stated that the Bank was willing to voluntarily produce all responsive documents but that the records could not be produced two days hence. Relying on the Bank's promise that it would produce responsive records, both foreign and domestic, within an estimated thirty days, I agreed to continue the appearance date for a BCCI records custodian, with the assurance from BCCI that by March 4, 1991, I would be advised of the exact date when the documents would be produced.

Since that time, the Bank's attorneys have been unable or unwilling to specify a return date for the subpoenaed records. Moreover, the promise of production within 30 days has degenerated to a promise to take steps, including letters rogatory, to obtain the foreign documents. Frustrated by the Bank's backtracking, I took the grand jury testimony of BCCI's record custodian this past Friday, March 22, 1991.

The custodian, Robert Stoll, BCCI's Director of Legal Compliance, produced certain domestic records responsive to some of the subpoenas for personnel records and for the banking records of two of the Bank's customers, Jaime Gaviria and George Barbar. As to the remaining subpoenas, relating to inter alia, bank customers Otano, Calderon, Villalba and Bilbeisi, no records were produced. The bank produced no foreign records whatsoever.

Mr. Stoll testified that "a request to Abu Dhabi" (home of the Bank's owners) for the overseas records had been made "in the last two weeks," i.e., after March 8, 1991. When asked to specify the country or countries in which records responsive to specific subpoenas were located, Mr. Stoll could not give an answer. Neither could he say when the records could be produced. When directed by the grand jury foreman to produce the records two weeks later, on April 5, 1991, Mr. Stoll answered that he could not be certain that he would still be employed by the Bank on that date because its withdrawal from the United States is imminent.

Department Criteria for Nova Scotia Litigation

According to the Office of International Affairs ("OIA") memo of November 17, 1983 (which you were kind enough to telefax to me this past Friday), three factors should be considered in a request to compel a financial institution to produce foreign records. As discussed below, each of these criteria is met here.

1. Lack of Alternative Methods

The records sought for five of the customers, Otano, Villalba, Calderon, Bilbeisi and Gaviria (and perhaps also for three of the bank employees, Malik, Fernandez and Sharman) have been located in England in the past according to a review of the domestic records produced by BCCI and information provided by Otano, Calderon and Villalba, who are cooperating with the government. I have been advised that the United States has no treaty in effect with the United Kingdom which would allow us to obtain the records subpoenaed for these individuals, all of which (with the exception of Gaviria) relate solely to the tax evasion aspect of this investigation.

As for the other records requested, it is currently impossible to say whether alternative means are available because the Bank has not specified the location of the other foreign records. A review of the domestic records produced by the Bank reveals that these other foreign records could be located, variously, in France, Panama, the United Arab Emirates, Luxembourg and elsewhere, given the Bank's extensive branch structure.

2. Indispensability of the Records

In the main, the investigation relates to allegations that BCCI assisted its customers in evading United States tax laws by maintaining secret "manager's ledger accounts" and taking other steps to disguise the interest and other income of its United States taxpayer customers. The Bank's records, particularly records of interest income, are vital to the success of this investigation. I have been able to obtain considerable testimony from former employees and Bank customers but, to ultimately make the case, I will need the Bank's records.

3. Protection Against Destruction of Documents

The evidence and testimony obtained thus far in the course of this investigation raise an extremely strong concern that records may be hidden or destroyed. The thrust of the allegations against BCCI is that the Bank engaged in a pattern of practices to conceal information from the United States. The three Bank customers identified above and a former banker have testified before a South Florida grand jury about secret accounts maintained by BCCI managers which were shielded from bank regulators, the IRS and other government agencies. The three cooperating bank customers have also testified that various other measures were taken by Bank officers to conceal documents and information (i.e. -- the falsification of loan collateral, the use of private inter-bank couriers, the holding of correspondence and more). In addition, another former Bank officer, Hamid Kahn, has proffered testimony that potentially incriminating documents in his files were "purged" after his employment was terminated. In light of this and other

evidence (including the information provided by AUSA Allan Sullivan under separate cover, as well as the statement of a Bank officer (recorded in the undercover tapes made during the Tampa BCCI investigation) that Bank attorneys had advised him to avoid a United States Senate subpoena for testimony and records) of a BCCI practice of concealing information from United States authorities, we have a serious reason to try to protect against the destruction or concealment of records. This concern is even stronger because the Bank is about to leave the United States.

CONCLUSION

For the reasons discussed above, I seek concurrence from OIA with my plan to enforce the attached subpoenas, by way of a motion to compel or for contempt. Because of the apparent imminence of the Bank's departure from the United States, I would like to bring this matter to our District's duty judge if the Bank fails to comply on April 5, 1991.

Thank you for your assistance on this matter.

Very truly yours,

DEXTER W. LEHTINEN
UNITED STATES ATTORNEY

BY:

Andres Rivero
ANDRES RIVERO
ASSISTANT UNITED STATES ATTORNEY

Enclosures

cc: AUSA Allan Sullivan



U.S. Department of Justice

*United States Attorney
Southern District of Florida*

*133 South Miami Avenue, Suite 709
Miami, Florida 33130*

May 13, 1991

James A. Bruton
Deputy Assistant Attorney General
Department of Justice
Tax Division
Room 4143
Washington, D.C.

Re: Proposed Prosecution of Munther Bilbeisi
and Kenneth Grushoff

Dear Mr. Bruton:

There is currently pending in the Southern District of Florida a proposed prosecution of the above referenced targets, which the Tax Division has under consideration. This case, which arises from a grand jury investigation, is of the greatest interest and significance to this district, and I write to convey the reasons that this office strongly urges approval by your division for prosecution.

This office has proposed prosecution of Munther Bilbeisi for an audacious tax fraud that resulted in attempted evasion of corporate and personal taxes on more than \$6.5-million in unreported income. Far from being a technical case, it essentially is a case of Bilbeisi directing that a blatantly false accounting record be created for a non-existent \$3 million business expense. He paid his tax preparer, Kenneth Grushoff, bribes to do this, and carried out the fraud over a four-year period.

This matter is an outgrowth from, and a potential vehicle to crack open, an ongoing investigation of the highest importance into institutionalized money-laundering by Bank of Credit and Commerce International (BCCI). A Title 18 criminal investigation into BCCI was entered into in this district in 1989. In approximately August, 1989, approval was granted for grand jury investigation into tax offenses by Bilbeisi; in approximately October, 1990, this authorization was expanded to cover Grushoff.

The BCCI investigation is one of paramount importance, and at present prosecution of Bilbeisi is one of the government's best

prospects for making this case. Bilbeisi was one of two principal customers at BCCI's Boca Raton branch; indeed, the branch was opened partly to serve him. If the government can exact his cooperation and truthful testimony through a prosecution of him, Bilbeisi stands in a position to provide devastating testimony as to an array of abusive banking practices and international money laundering by BCCI. Conversely, if prosecution of Bilbeisi cannot go forward, the government's investigation into BCCI will be severely impeded.

The Bilbeisi matter has been carefully investigated by top-caliber personnel both at the IRS and in this office. Extensive grand jury and other investigative work has been done, and strong evidence has been developed.

Although your division's review is not complete, this office has been in close communication with your reviewers, and we are aware that there are aspects of the proposed prosecution that give your reviewers pause. There also have been some factual misunderstandings. I believe that this may partly be due to the short time frame for review of this matter. The SAR was completed and made available to your division April 15, but substantive review of it did not begin in the division until last week; the statute of limitations begins to expire May 16, 1991. The grand jury is reconvening May 15, and that is the last possible day for indictment before the statute of limitations begins to run. Where there have been factual misunderstandings, we have endeavored to clear them up by consultation with the Tax Division reviewers.

THE CASE

For all the reasons stated above, I believe that prosecution of Munther Bilbeisi and Kenneth Grushoff is appropriate and should be authorized. Munther Bilbeisi sought to perpetrate a blatant fraud on the Treasury of the United States, and "vigorous enforcement of the internal revenue laws," as prescribed by the Federal Tax Enforcement Program at USAM 6-4.010 calls for his

prosecution, and prosecution of the corrupt tax preparer who facilitated his crime for a bribe. The case is important not only in its own right, as a blatant, multi-million dollar tax fraud, but also as a steppingstone to BCCI, a tax investigation of the highest national importance.

I urge that the Tax Division authorize this prosecution. I also request to be notified, through the assigned AUSA, of your decision as soon as it is made.

Yours truly,


DEXTER W. LEHTINEN
UNITED STATES ATTORNEY

cc: J. Randolph Maney



U.S. Department of Justice

United States Attorney
Southern District of Florida

155 South Miami Avenue, Suite 700
Miami, Florida 33130

August 2, 1991

Mr. Robert S. Mueller, III
Assistant Attorney General
Criminal Division
U.S. Department of Justice
10th and Constitution, N.W., Room 5119
Washington, D.C. 20530

RE: Permission to Compel in connection with BCCI subpoenas

Dear Mr. Mueller:

In light of the recent review undertaken by the Department of Justice in connection with all matters related to the Bank of Credit and Commerce International (BCCI), I request that reconsideration be given to approving the two requests of this Office (both dated March 26, 1991) to permit me to move for compulsion orders enforcing subpoenas duces tecum issued previously to BCCI.

I am enclosing our previous correspondence of March 26, 1991, consisting of two separate letters (one signed by AUSA Allan Sullivan, the lead prosecutor in the Centrust investigation, on my behalf, and another signed by AUSA Andres Rivero, the lead prosecutor on the BCCI tax investigation, on my behalf). The letters requested permission to enforce BCCI subpoenas which had been issued in January, 1991. I request that I be permitted to enforce all subpoenas as requested therein.

The March 26th requests were denied entirely by the Office of International Affairs (OIA), but Mr. Mark Richard kindly arranged permission for me to enforce subpoenas requesting records of BCCI in Panama and the United Arab Emirates. However, permission to enforce subpoenas relating to records of BCCI in the United Kingdom, France, Switzerland, Luxembourg, Grand Cayman, Bahamas and Holland was denied.


As you may know, we successfully moved to compel compliance by BCCI regarding records in Panama and the UAE on April 5, 1991, and successfully moved for sanctions on May 10, 1991, resulting in fines levied by Judge Lenore Nesbitt of \$350,000 (seven days of non-compliance with a fine of \$50,000 per day). After seven days of fines, BCCI complied on June 27, 1991.

Mr. Robert S. Mueller, III
U.S. Department of Justice
August 2, 1991
Page 2

The law in the Eleventh Circuit clearly permits such enforcement. Although the efficacy of compulsion at the present time is somewhat less than in previous months, since BCCI has been taken over in various forms in some countries, my AUSAs and I believe that compulsion is still clearly appropriate and useful. In some cases, the resulting court orders will aid in inducing the new trustees of BCCI records to cooperate; in other cases, BCCI has not yet been taken over by local governments and the court orders will have direct use. In the United States, the court orders will be useful in dealing with the U.S. trustees\receivers of BCCI.

Thank you for your consideration of this matter.

Sincerely,



Dexter Lehtinen
United States Attorney

DWL:gi



U.S. Department of Justice

*United States Attorney
Southern District of Florida*

*155 South Miami Avenue, Suite 700
Miami, Florida 33130*

August 2, 1991

BY: Telecopier and mail

Mr. Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Ms. Shirley D. Peterson
Assistant Attorney General
Tax Division

U.S. Department of Justice
10th and Constitution, N.W., Room 5119
Washington, D.C. 20530

RE: Permission to indict BCCI-related individual tax case
regarding Louis Altemar

Dear Mr. Mueller and Ms. Peterson:

I am writing to request expedited approval to prosecute Louis Altemar for an income tax violation, pursuant to a Special Agent's Report (SAR) which has been under review by the Tax Division since July 3, 1991. Mr. Altemar is a cooperating witness in the Bank of Credit and Commerce International (BCCI) tax investigation being conducted in this district.

The proposed criminal prosecution consists of a violation of 26 USC 7206 for the tax year 1986. The current status of the Tax Division's review of the Altemar SAR is that the Tax Division has requested on July 9, 1991, that Altemar be re-interviewed prior to approval of the proposed tax charge. A memo of follow-up interview of Altemar was telefaxed to the Tax Division on July 16, 1991.

The AUSA assigned to the case and I both believe that the Altemar SAR and investigation are complete. Therefore we request that the SAR be approved in its entirety and that the prosecution be permitted to proceed.

Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in dark ink, appearing to read "Dexter W. Lehtinen".

Dexter W. Lehtinen
United States Attorney



U.S. Department of Justice

United States Attorney
Southern District of Florida

155 South Miami Avenue, Suite 700
Miami, Florida 33130

August 2, 1991

BY: Telecopier and mail

Mr. Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Ms. Shirley D. Peterson
Assistant Attorney General
Tax Division

U.S. Department of Justice
10th and Constitution, N.W., Room 5119
Washington, D.C. 20530

RE: Tax Prosecution of BCCI-related individual taxpayer
Heather Wyser-Pratte

Dear Mr. Mueller and Ms. Peterson:

I am writing to request approval to prosecute Heather Wyser-Pratte for various income tax violations, pursuant to a (SAR) Special Agent's Report which has been under review by the Tax Division for more than a year, since May 15, 1990. Ms. Wyser-Pratte is a customer-target in the Bank of Credit and Commerce International (BCCI) tax investigation being conducted in this district.

The proposed criminal prosecution consists of violations of 26 USC 7201 and 7206 for the tax years 1983, 1984, 1985, 1986, 1987 and 1988. During the 15 months that this matter has been pending with the Tax Division, the statute of limitations has expired with regard to the 1983 and 1984 tax years.

The current status of the Tax Division's review of the Wyser-Pratte SAR is that the division has denied permission to indict unless a foreign-national witness, Tariq Jan, also a target of the investigation, is located overseas and his testimony is procured on behalf of the government. For practical purposes, such a development is impossible.

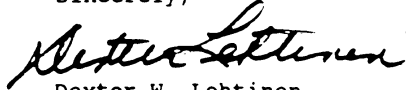
Mr. Robert S. Mueller, III
U.S. Department of Justice
Criminal Division

Ms. Shirley D. Peterson
U.S. Department of Justice
Tax Division
Page 2

Neither the AUSA assigned to the case nor I believe that the testimony of this witness is essential to the prosecution of this case. Therefore, we request that the SAR be approved in its entirety for the years not barred by the statute of limitations and that the prosecution be permitted to proceed.

Your prompt attention to this matter is appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Dexter W. Lehtinen". The signature is fluid and cursive, with a prominent initial "D" and a trailing flourish.

Dexter W. Lehtinen
United States Attorney



U.S. Department of Justice

United States Attorney

Southern District of Florida

155 South Miami Avenue, Suite 700

Miami, Florida 33130

August 2, 1991

By Telecopier and Mail

Mr. Robert S. Mueller, III
Assistant Attorney General
Criminal Division
U.S. Department of Justice
10th and Constitution, N.W., Room 5119
Washington, D.C. 20530

Ms. Shirley D. Peterson
Assistant Attorney General
Tax Division
U.S. Department of Justice
10th and Constitution Avenue N.W., Room 4143
Washington, D.C. 20530

Re: Tax Prosecutions of BCCI Customer Munther Bilbeisi

Dear Mr. Mueller and Ms. Peterson:

In light of the Department's recent review of matters concerning the Bank of Credit and Commerce International (BCCI), I request that reconsideration be given to approving all tax charges against Mr. Munther Bilbeisi as requested in my earlier letter of May 13, 1991 (copy enclosed).

The Tax Division initially declined the matter entirely, but upon my subsequent request partial approval was granted. The charges against Bilbeisi that were denied and for which I seek reconsideration and approval are as follows:

-- With respect to Mr. Munther Bilbeisi's personal returns, violations of 26 USC 7201 for the tax years 1984, 1985, 1986, and 1987; and

-- With respect to Coffee Inc.'s corporate returns (Mr. Bilbeisi's company), violations of 26 USC 7201 for the tax years 1984 and 1985.

As I said in my letter of May 13, 1991 "[t]his matter is an outgrowth from, and a potential vehicle to crack open, an ongoing investigation of the highest importance into institutionalized money-laundering by Bank of Credit and Commerce International (BCCI)." I added as well that "[t]he BCCI investigation is one


of paramount importance, and at present prosecution of Bilbeisi is one of the government's best prospects for making this case.. .. The case is important not only in its own right, as a blatant, multi-million dollar tax fraud, but also as a steppingstone to BCCI, a tax investigation of the highest national importance."

My May 13 letter was written after we received notice that the entire prosecution would be denied. Subsequently the Tax Division advised by letter dated May 15, copy enclosed, that only partial approval would be granted, with approval withheld as described above.

I plan to present this case for indictment, on the charges now approved, by the federal grand jury on Friday August 9, 1991. I will be prepared to present the entire case for indictment on August 16, 1991, if approval is granted immediately for the additional charges as requested herein.

Thank you for your consideration of this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dexter Lehtinen".

Dexter Lehtinen
United States Attorney



U.S. Department of Justice

United States Attorney
Southern District of Florida

T/C

225 South Miami Avenue, Suite 700
Miami, Florida 33130

August 5, 1991

By telecopier and mail

Mr. Robert S. Mueller, III
Assistant Attorney General
Criminal Division

Ms. Shirley D. Peterson
Assistant Attorney General
Tax Division

U.S. Department of Justice
10th and Constitution, N.W.
Room 5119
Washington, D.C. 20430

Re: BCCI Tax Investigation

Dear Mr. Mueller and Ms. Peterson:

I write to request expedited and streamlined approval by the Tax Division of proposed indictments relating to the BCCI tax investigation which I intend to present to a federal grand jury as soon as possible. As you know, this investigation concerns allegations that BCCI and certain of its bankers and customers engaged in a wide-ranging, multi-million dollar fraud on the Internal Revenue Service and on the United States.

I request joint approval of both the expansions of the investigations and final approval of prosecutions, on-site at the IRS, CID Deerfield Beach, Florida office, commencing the week of August 19, 1991. In particular, I request that these on-site reviews be undertaken by officials authorized to make decisions on the scene without need for further review in Washington, D.C. These on-site reviews are to include the proposed prosecutions of the following individuals and entities:

Bank of Credit and Commerce International, S.A.
BCCI Holdings (Luxembourg) S.A.
Bank of Credit and Commerce International (Overseas) Limited
Shaikh Mohammad Shafi

Nadim Hasan
[REDACTED]

Tariq Nasim Jan
[REDACTED]
[REDACTED]

I also seek on-site approval at that time regarding only expansions of the investigations of the following persons:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The on-site reviews concerning expansions of investigations requested should also be coordinated so that they are conducted jointly by the Tax Division and both District and Regional Counsel from IRS.

The Assistant United States Attorneys assigned to the case and I firmly believe that only this joint review can result in expeditious and effective prosecution and investigation of the targets and subjects of our BCCI tax investigation.

Thank you for your consideration of this matter.

Sincerely,


DEXTER W. LEHTINEN
UNITED STATES ATTORNEY



*United States Attorney
Southern District of Florida*

155 South Miami Avenue, Suite 700
Miami, Florida 33130

August 19, 1991

Laurence I. Urgenson, Chief
Fraud Section
Department of Justice
Room 2100
BOND Building
1400 New York Avenue, N.W.
Washington, D.C. 20038

Re: Documents sought from BCCI

Dear Mr. Urgenson:

It is my understanding that you wish to present to counsel for the liquidators of Bank of Credit and Commerce International (BCCI) entities in Luxembourg, the Cayman Islands and the United Kingdom a consolidated request from the Department of Justice for BCCI records being sought in connection with investigations into possible federal criminal investigations. This office wishes to participate in this consolidated request -- indeed, we propose that documents previously subpoenaed from BCCI by this district be the top priority in such a request -- and to that end I will detail in this letter the documents we wish your consolidated request to seek from BCCI.

However, this office also wishes to reserve the ability to use all other lawful means of securing documents from BCCI, and I am concerned that the consolidated request not suggest otherwise, either directly or by implication. This office recently asked the Criminal Division of the Department of Justice to reconsider approving two March 26, 1991 requests for this office to be permitted to seek "Bank of Nova Scotia"¹ compulsion orders enforcing subpoenas duces tecum previously issued to BCCI, see correspondence attached as Attachment A.. We continue to press for that reconsideration, with an eye to exerting the maximum compulsive power to obtain BCCI records as soon as possible.

¹See In re Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982), cert. denied, 103 S.Ct. 3086 (1983).

We also will resist any efforts by the BCCI liquidators to seek relief or lifting of previously-imposed fines of \$350,000 for past non-compliance by BCCI with subpoenas as to which the Criminal Division authorized "Nova Scotia" enforcement. The District Court for the Southern District of Florida strongly and promptly supported our enforcement effort, by imposing these fines, which have been upheld by the Eleventh Circuit in a strongly-worded opinion, and which resulted in the eventual disgorgement of records. "Nova Scotia" enforcement has proven to be the most effective weapon we have to obtain BCCI records, and we do not wish to abandon it. Therefore, we wish any communication of the consolidated request to the liquidators to make explicit that it is a supplement, not an alternative, to use of grand jury subpoenas, and possible "Nova Scotia" type enforcement.

We also are concerned that the "consolidated request" vehicle not slow the production process, including by creating additional layers of intermediaries. We experienced a history of stalling tactics and unfulfilled undertakings by BCCI prior to liquidation, and are wary of becoming embroiled in further delays. This is not to impute bad faith to current counsel for the liquidators (or, indeed, to past counsel for BCCI); rather, it illustrates that the BCCI institution itself is most reluctant to disgorge records, and that the maximum coercive power -- in this case, grand jury process backed by "Nova Scotia" enforcement -- is necessary to prompt production. Our time constraints -- pressing even in March, 1991, when "Nova Scotia" enforcement authorization was sought -- are more urgent now, with the CentTrust grand Jury facing the expiration of its extended term, and with the "BCCI tax case" slated for indictment consideration in the very near future. (However, investigation will continue in that matter on cases concerning participation in tax violations by BCCI customers, and grand jury process may continue to be used with regard to those ongoing investigations.)

Subpoenas in the CentTrust investigation were issued to BCCI in August 1990 and March 1991; subpoenas in the BCCI tax investigation were issued to BCCI in January 1991. Due to the age of these subpoenas, and the pressing state of the investigations in this district, we request that the document demands of these subpoenas (appended hereto as Attachment B) be given the first priority in the "consolidated request," with production to be made at the earliest possible date. We also are seeking additional BCCI documents, beyond those previously subpoenaed. These additional document requests appear at Attachment C, and we ask that they be given the next priority, following our subpoena demands reflected in Attachment B, in the consolidated request.

It is our wish that any BCCI documents be fully authenticated by a knowledgeable, accountable custodian of records, in the grand jury. We ask that the "consolidated request" specify this condition, and make clear that informal production to the Department of Justice will not be sufficient. We also wish the "consolidated request" to make explicit that the records must be

originals. Further, just as our initial subpoenas sought BCCI records without geographic limitation, the consolidated request also should apply to BCCI records worldwide. That is, the liquidators are asked to produce these records from whatever BCCI offices, worldwide, may have them.

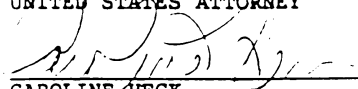
BCCI is a target of this district's "tax case," and this was explicitly known to pre-liquidators' counsel. (Indeed, the Eleventh Circuit opinion, which is sealed, made this explicit.) It might be prudent for the consolidated request to reiterate this to the new counsel; this office also will make this known explicitly to counsel for the liquidators. BCCI's status in the CenTrust investigation is less clear-cut; in that case, the bank is clearly a subject, and may become a target.

This office considers that document production from BCCI should be sought by all legal means. In hopes that the "consolidated request" process may prove fruitful, we join in it. At the same time, we wish to continue pressing forward with other, more compulsive, means for document production, including as discussed above. We are most concerned that our participation in the consolidated request not be interpreted as a concession that more compulsive production will not be sought, and accordingly ask your assistance in drafting the consolidated request so as to preclude such an interpretation.

Yours truly,

DEXTER W. LEHTINEN
UNITED STATES ATTORNEY

BY:


CAROLINE HECK
ASSISTANT UNITED STATES ATTORNEY

Attachments



U.S. Department of Justice

United States Attorney
Southern District of Florida255 South Miami Avenue, Suite 700
Miami, Florida 33130


September 11, 1991

James A. Bruton
Deputy Assistant Attorney General
Tax Division
Department of Justice
Room 4143
9th and Pennsylvania, N.W.
Washington, D.C. 20530

Re: Proposed prosecution of BCCI
Holdings (Luxembourg) S.A., et al.

Dear Mr. Bruton:

We have received your letter dated September 10, 1991 requesting that we submit in writing some of the information and evidence which we discussed with you and your staff in the meeting last Thursday. We also appreciate your giving us the opportunity to present our case in person. This letter is written to provide you with as complete information as is available. As you know, we hope to secure your approval to prosecute this case as soon as possible and we have therefore undertaken to respond to your letter as quickly as possible:

- (1) A copy of the proposed indictment is attached;
 - (2) A copy of the transcript is attached;
 - (3) With respect to your request for any legal and factual authority relating to the issue of
- 

[REDACTED]

Some of the specific references to testimony already given on these issues include [REDACTED]

(4) As we said at our meeting last week, BCCI Holdings (Luxembourg) S.A. was dismissed as a defendant in the Tampa indictment. We were told by one of the Tampa AUSAs who prosecuted the case that no one appeared on behalf of Holdings and that it was dismissed simply so that the Court could close the case after the trial and pleas were all worked out. We were also told by one of the Tampa prosecutors that dismissal orders are not typically issued in writing by courts in that district and that the only way to determine whether the Holdings' dismissal was with or without prejudice is to review the transcript of relevant court proceedings.

Whether or not the lawyers for the subsidiaries secured a dismissal of BCCI Holdings with prejudice, the lawyers for the subsidiaries, Bank of Credit and Commerce International (Overseas) Ltd., and Bank of Credit and Commerce International (S.A.) were taking some steps to protect Holdings' interests because in paragraph 1(f) of both the Overseas and SA plea agreements they secured the agreement by the U.S. Attorney for the Middle District of Florida not to further charge any of the entities, including Holdings.

While we do intend to obtain that written transcript, as we stated in the meeting last Thursday, we do not view either a dismissal by the Tampa U.S. Attorney, whether with or without prejudice, or the agreement by him not to further prosecute either Overseas, SA or Holdings, as precluding any prosecution by U.S. Attorneys for other districts. Rather, it is the double jeopardy consequence of the plea by Overseas and SA to the Klein conspiracy in Count Two of the Tampa indictment which sounds the death knell to further prosecution of Overseas and SA. We know of no authority for the proposition that the dismissal of Holdings without a plea to the crime or an adjudication of guilt or innocence would bar subsequent prosecution by other districts.

(5) We have previously been advised by federal and state bank examiners that, in their view, [REDACTED]

[REDACTED] We are still investigating whether BCCI [REDACTED]

[REDACTED] If such actions constitute regulatory violations such evidence would strengthen the case but we do not believe it is the sine qua non of a successful prosecution.

(6) We do not intend to charge the bankers and the holding company with violations of Title 26, U.S.C. §7206(2) at this time. If we find additional evidence, such as the failure to file any required Forms 1099, we will want to revisit this issue.

(7) The issue of BCCI's obligations to generate [REDACTED]

(8) See [REDACTED] at 104 and also at 48-49, 51, 53-54, 62-68, 78, 120-121, 237-238.

(9) Frankly, the problem you perceive with the testimony of [REDACTED] and [REDACTED] is not seen by us as a major problem. The problem you perceive as we understand it is that while they [REDACTED]

There are two possible explanations for their reluctance. First, they actually had [REDACTED]

[REDACTED] Clearly, at least [REDACTED]

The second possible explanation is that [REDACTED]

Our view is that the charge we must prove is that the bankers conspired to obstruct the functions of the IRS, by among other activities, concealing the existence of foreign accounts for U.S. taxpayers. Each of the [REDACTED]

[REDACTED]

[REDACTED]

Whether or not [REDACTED] as their initial intention or even an afterthought is not really critical. At worst, they will be cross-examined as to whether they in fact [REDACTED] and they will answer yes or no at that time. How much they admit may depend upon whether they are still [REDACTED]

[REDACTED] Accordingly, we do not think that their credibility

[REDACTED]

on the obstruction issue can be seriously damaged. In our view it is like asking a narcotics trafficker whether he intended to actually use some of what he imported. He can answer yes or no. The jury can believe whatever they want. His credibility is not seriously damaged so long as there is evidence corroborating his importation scheme.

Moreover, as we mentioned, we have the flexibility of substituting the testimony of [REDACTED], for their testimony if we are willing to negotiate a plea satisfactory to him.

(10) See [REDACTED] at 17-24 ([REDACTED]); 41; 63-68; 84; 85-88 ([REDACTED]); 90; 95 ([REDACTED]); 104-112; 113-120 ([REDACTED]); 121 ([REDACTED]); 124-127 ([REDACTED]) and 127-128

A. The grand jury testimony of [REDACTED], especially as follows:

[REDACTED]

[REDACTED]

Q: [REDACTED]
[REDACTED] . . ?

A: [REDACTED]

Q: [REDACTED]

A: [REDACTED]

[REDACTED] at 38-40.

See also [REDACTED] at 79-80 ([REDACTED])
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

B. The tape recordings of conversations, between undercover agent Robert Mazur and various bankers, contain explicit discussions of the tax purposes described by [REDACTED].

(12) We have obtained from the Tampa agents those trial exhibits describing [REDACTED]. Copies of those exhibits are attached.

(13) See [REDACTED] at 84 (" [REDACTED]"); 85; 104-111 (" [REDACTED]"); 115-120 (" [REDACTED]"); 147; 214; 218; 232-233; 234-235 and 237.

(14) The subpoenas were for [REDACTED]'s accounts, not for tax records. The subpoenas caused [REDACTED]. See [REDACTED] at 145-148.

(15) On Monday, September 9, 1991, we telefaxed to Joe Giannullo another copy of the two memoranda in the [REDACTED] file which we examined and discussed at the meeting last Thursday. You have asked us to address what use we would make of these documents found in the [REDACTED]. (1) the handwritten memorandum by [REDACTED] to the file to the effect that [REDACTED] and (2) the memorandum from [REDACTED] to [REDACTED] explaining [REDACTED].

We will send you a separate short memorandum reiterating the position which we set forth in the meeting last Thursday. Generally, it is our position that [REDACTED].

Sincerely yours,

DEXTER LEHTINEN
UNITED STATES ATTORNEY



U.S. Department of Justice

United States Attorney

Southern District of Florida

155 South Miami Avenue, Suite 700
Miami, Florida 33130

September 25, 1991

James A. Bruton
Deputy Assistant Attorney General
Tax Division, Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 200

Re: BCCI Tax Prosecution

Dear Mr. Bruton:

We await your decision on the prosecution we have proposed to you of BCCI Holdings (Luxembourg) S.A., Shaikh Mohammad Shafi, Syed Nadim Hasan and Tariq Nasim Jan for violating Title 18 U.S.C. §371. In our last discussions, your office was researching the issue whether the circumstances of the dismissal of BCCI Holdings from the litigation in Tampa barred prosecution by this District.

In our research, we have concluded that there are no reported cases which would bar prosecution by this District. We rely on the arguments previously made that the dismissal bars only the U.S. Attorney for the Middle District of Florida from further prosecuting BCCI Holdings.

As you know, in light of your preliminary decision not to approve the prosecution of BCCI or its bankers under §7206(2), we revised our indictment to delete those charges. However, your final decision regarding this issue is particularly critical because the statute of limitations will bar an additional Count under §7206(2) on October 17, 1991. While it is true that the statute is tolled if the defendants are not in the country, it is unclear to us whether BCCI Holdings is outside the United States in light of the bankruptcy proceedings pending in New York.

We believe there is sufficient evidence to support the conspiracy charge proposed and we stand ready to indict this case before the grand jury which meets this Friday, September 27, 1991.

Sincerely,

Dexter Lehtinen
United States Attorney



U.S. Department of Justice

United States Attorney

Southern District of Florida

DAG

155 South Miami Avenue, Suite 700

Miami, Florida 33130

September 25, 1991

Mr. Michael Carey
Associate Deputy Attorney General
Department of Justice
10th & Constitution Ave., N.W.
Washington, D.C. 200

Re: BCCI Tax Prosecution

Dear *Mike* Carey:

We await your decision on the prosecution we have proposed to you of BCCI Holdings (Luxembourg) S.A., Shaikh Mohammad Shafi, Syed Nadim Hasan and Tariq Nasim Jan for violating Title 18 U.S.C. §371. As you will recall, we met in Washington on September 5, 1991, at my request that this District be granted approval to indict this case notwithstanding the lack of approval by the Tax Division. In essence, I was appealing the decision of the Tax Division, although the Tax Division has been kind enough not to formally decline the case. We have coordinated with the Tax Division in numerous subsequent discussions, but we have not received approval and continue to believe that the case should be indicted without delay.

In our last discussions with the Tax Division, they were researching the issue whether the circumstances of the dismissal of BCCI Holdings from the litigation in Tampa barred prosecution by this District. In our research, we have concluded that there are no reported cases which would bar prosecution by this District. We rely on the arguments previously made that the dismissal bars only the U.S. Attorney for the Middle District of Florida from further prosecuting BCCI Holdings.

As you know, in light of the Tax Division's preliminary decision not to approve the prosecution of BCCI or its bankers under §7206(2), we revised our indictment to delete those charges. However, the final decision regarding this issue is particularly critical because the statute of limitations will bar an additional Count under §7206(2) on October 17, 1991. While it is true that the statute is tolled if the defendants are not in the country, it is unclear to us whether BCCI Holdings is outside the United States in light of the bankruptcy proceedings pending in New York.

Mr. Michael Carey
September 25, 1991
Page 2

We believe there is sufficient evidence to support the conspiracy charge proposed and we stand ready to indict this case before the grand jury which meets this Friday, September 27, 1991.

Sincerely,

A handwritten signature in black ink, appearing to read "Dexter", written in a cursive style.

Dexter Lehtinen
United States Attorney



U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

November 6, 1991

Honorable Dexter W. Lehtinen
United State Attorney
Southern District of Florida
155 South Miami Avenue
Miami, Florida 33130

RE: BCCI Holdings (Luxembourg)
Shaihk Shafi
Nadim Hasan
Tariq Jan

Dear Mr. Lehtinen:

This case was originally received in the Tax Division on August 19, 1991, when two of their trial attorneys began an on site review of the evidence in Miami at your request. After a series of discussions with the Tax Division concerning the evidence in this case, your office has proposed a single count Klein conspiracy to impede the IRS, consisting of four defendants listed above. In late September, your office informed the Tax Division by telephone that you believed no further investigation of the proposed charges was necessary and requested prosecution approval on the existing evidence.

In the exchange of views between your office and the Tax Division (written and oral), the Tax Division has raised substantial questions of fact and law, several of which have been addressed by your office, many of which have been left open.

There are significant issues raised by the Tax Division both as to the legal standard (United States v. Pritchett, 908 F.2d 816 (11th Cir 1990)) and the apparent ready availability of more substantial proof for the proposed "global" case.

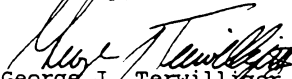
As you know, the Department remains committed to aggressive investigations and prosecutions of BCCI related crimes, wherever appropriate. I am therefore prepared to defer to your prosecutorial judgement on this matter with the following conditions.

First, that you coordinate the proposed charging language with Assistant Attorney General Shirley Peterson of the Tax Division, and Assistant Attorney General Robert Mueller of the Criminal Division, who has overall coordination responsibility for BCCI criminal matters.

Second, I do not believe that effective prosecution of this entity is served by an incomplete investigation. You should expeditiously pursue some of the many potential leads that are available, thereby addressing both the legal standard of proof concern and the sufficiency of the evidence which the Tax Division called to your attention during their review of the proposed prosecution.

As part of my deferral to your discretion, I expect that the above aspects of the matter will receive the additional attention they need within the next two to four weeks. The Tax Division stands ready to supply attorney support of that effort should you deem that helpful.

Sincerely,


George J. Terwilliger, III
Principal Associate Deputy
Attorney General



U.S. Department of Justice

 United States Attorney
 Southern District of Florida

T

 155 South Miami Avenue, Suite 700
 Miami, Florida 33130

BY TELEFAX AND MAIL

 COPY TO JIM BRUTON,
 TAX DIVISION

November 8, 1991

 Shirley D. Peterson
 Assistant Attorney General
 Tax Division
 Department of Justice
 10th and Constitution Avenue, N.W.
 Washington, DC 20530

Dear Ms. Peterson:

Jim - Wanted you to have a copy
Shirley - Thanks, Dexter

Pursuant to Principal Associate Deputy Attorney General George J. Terwilliger's letter dated November 6, 1991, a copy of which is attached, I have been given authority to seek an indictment against BCCI and three of its bankers based on a Klein conspiracy theory. In the interest of coordinating the language of the indictment with the Tax Division, I am enclosing a copy of our proposed indictment in the form I plan to present it to the grand jury in Miami on November 15, 1991. This is substantially the same document we presented to Mr. James Bruton and other members of your staff in August, 1991.

Also, I reiterate the request my staff has made for a copy of the Tax Division's recent memorandum which apparently notes certain areas of investigation and legal sufficiency concerns regarding this case. I am sure all of us want to see the strongest prosecution possible and we would appreciate your counsel and advise.

Please let me know any comments or suggestions you have regarding the language of the indictment as soon as possible.

Sincerely,

 DEXTER W. LEHTINEN
 UNITED STATES ATTORNEY



U. S. Department of Justice

United States Attorney
Southern District of Florida

Refer: ☐ 155 S. Miami Ave., Suite 700
To : ☐ Miami, Florida 33130-1593

☐ 299 E. Broward Blvd., Rm. 203B
☐ Ft. Lauderdale, Florida 33301

☐ 701 Clematis Street, Room 317
☐ West Palm Beach, Florida 33401

November 8, 1991

Robert Mueller
Assistant Attorney General
Criminal Division
Department of Justice
10th and Constitution Avenue, N.W.
Washington, DC 20530

Dear Mr. *Bob* ~~Walters~~:

Pursuant to Principal Associate Deputy Attorney General George J. Terwilliger's letter dated November 6, 1991, a copy of which is attached, I have been given authority to seek an indictment against BCCI and three of its bankers based on a Klein conspiracy theory. In the interest of coordinating the language of the indictment with the Tax Division, I am enclosing a copy of our proposed indictment in the form I plan to present it to the grand jury in Miami on November 15, 1991. This is substantially the same document we presented to Mr. James Bruton and other members of the Department in August, 1991.

Please let me know any comments or suggestions you have regarding the language of the indictment as soon as possible.

Sincerely,

DEXTER W. LEHTINEN
UNITED STATES ATTORNEY

Thanks!



U.S. Department of Justice

Tax Division

T

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

November 12, 1991

The Honorable Dexter W. Lehtinen
United States Attorney
Southern District of Florida
155 South Miami Avenue
Miami, FL 33130

Re: BCCI Holdings (Luxembourg)
Shaikh Mohammed Shafi
Syed Nadim Hasan
Tariq Nasim Jan

Dear Mr. Lehtinen:

I have received your latest draft of the proposed BCCI tax indictment, which appears to be substantially the same as the September 11, 1991, draft.

Although careful review suggests that the indictment has been drafted with the hope of avoiding a variance in the proof at trial, I have some concern that it may not actually charge a conspiracy consistent with the requirements of the Eleventh Circuit's decision in United States v. Pritchett, 908 F.2d 816 (11th Cir. 1990). However, my primary concern is not with the indictment itself but rather that there may be a lack of sufficient evidence to meet the Pritchett standard. This is a problem that charging language would not normally alleviate. I have enclosed for your use copies of two review notes I have prepared addressing the legal and factual concerns referred to in Acting Deputy Attorney General Terwilliger's November 6, 1991, letter. These review notes summarize the concerns that I and the other members of the Tax Division have raised orally at meetings and in our telephone conversations with you and members of your office.

- 2 -

Aside from the proof problems referred to in the memoranda, my concerns with the actual indictment language are few:

1. At the end of the second sentence in paragraph 12 on page 5 of the draft the words "tax violators" should be used in lieu of tax "evaders." Our crucial witnesses [REDACTED] and [REDACTED]

[REDACTED]. They can, therefore, properly be considered tax violators, [REDACTED]

2. For the same reasons, the last sentence in paragraph 3 on pages 11 and 12 should be changed from ". . . people evading taxes and currency restrictions" to ". . . people evading tax laws and currency restrictions."

3. The draft refers a number of times to [REDACTED]

[REDACTED]. The government currently cannot prove that [REDACTED]

[REDACTED]. Similarly, [REDACTED]

[REDACTED]. Accordingly, the draft indictment's references to [REDACTED] exceed the government's ability to prove those allegations.

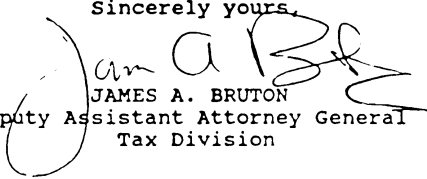
4. The draft contains many references to the Tampa undercover investigation (Overt Acts 21, 23, 24, 28, 34, 35, 36, 37, 38, 39, 41, 42, 44, 45, 46, and 49). It may be helpful, whenever possible, to avoid these references. The closer the allegations in this indictment are to the 1988 Tampa plea by Holdings and S.A., the more likely a court would be to find an identity between this case and the charge dismissed with prejudice as a result of the Tampa plea bargain. Therefore, minimal references in this indictment to overt acts used in the Tampa Klein conspiracy would be a worthwhile precaution to avoid the possibility of the court's finding some sort of preclusion based on the Tampa plea bargain.

- 3 -

Finally, I note that the Acting Deputy Attorney General's letter specifically requires you to coordinate your indictment language with Assistant Attorney General Robert S. Mueller of the Criminal Division. He may have concerns in addition to the items I have addressed above. Please be sure that he has a copy of your latest draft and ample opportunity to review it.

If you have any questions or need any assistance from the Tax Division, please contact me. I have, as my review notes show, expressed a number of legal and factual concerns about this case but hope that, in the end, they all prove to be unfounded. You have my best wishes and whatever support you need from me in bringing this case to a successful conclusion.

Sincerely yours,



JAMES A. BRUTON
Deputy Assistant Attorney General
Tax Division

cc: George J. Terwilliger
Acting Deputy Attorney General

Robert S. Mueller
Assistant Attorney General
Criminal Division

DRAFT

AR:cmc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA5 pm
8/24/91

NO.

18 U.S.C.	\$371
26 U.S.C.	\$7206(2)
18 U.S.C.	\$1343
18 U.S.C.	\$2

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG) S.A.,
BANK OF CREDIT AND COMMERCE INTERNATIONAL (SA),
BANK OF CREDIT AND COMMERCE INTERNATIONAL
(OVERSEAS), LTD,
SHAIKH MOHAMMAD SHAFI,
BANDE HASAN,
SYED NADIM HASAN,
MOHAMMAD SADIQ HAMIDANI,
TARIQ NASIM JAN
and MAJAZ UL HAQUE MALIK,

INDICTMENT

defendants.

The Grand Jury charges that:

Between at least February of 1983, through in or about May of 1989, BCCI Holdings (Luxembourg) S.A., ("BCCI Holdings") the Bank of Credit and Commerce International (SA) ("BCCI SA"), the Bank of Credit and Commerce International (Overseas), Ltd. ("BCCI Overseas") (collectively "BCCI"), and the individual defendants, each of whom was an officer with BCCI SA or BCCI Overseas, engaged in a conspiracy designed to generate deposits into BCCI SA and BCCI Overseas from any source, illegal as well as legal. The defendants targeted as potential customers persons who had criminal purposes in establishing bank accounts including persons who intended falsely to report their income and assets to the Internal Revenue Service. Defendants attracted and counseled as customers persons who intended to file false United States income tax returns, by

Nov. 1991

AR:cmc

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDANO. 91-0832-CR-RYSKAMP
18 U.S.C. §371

UNITED STATES OF AMERICA

v.

BCCI HOLDINGS (LUXEMBOURG) S.A.,
SHAIKH MOHAMMAD SHAFI,
SYED NADIM HASAN,
and TARIQ NASIM JAN,INDICTMENTDefendants.
_____ /

The Grand Jury charges that:

1. Between at least February of 1983, through in or about May of 1989, defendant BCCI HOLDINGS (Luxembourg) S.A., ("BCCI HOLDINGS") the Bank of Credit and Commerce International (SA) ("BCCI SA"), the Bank of Credit and Commerce International (Overseas), Ltd. ("BCCI Overseas"), (collectively "BCCI"), and the individual defendants, each of whom was an officer with BCCI SA or BCCI Overseas, engaged in a conspiracy designed to generate deposits into BCCI SA and BCCI Overseas from any source, illegal as well as legal. The defendants targeted as potential customers persons who had criminal purposes in establishing bank accounts including persons who intended falsely to report their income and assets to the Internal Revenue Service. Defendants attracted and counseled as customers persons who intended to file false United States income tax returns, by providing to them secret foreign bank accounts, advice and assistance in establishing nominee foreign corporations, and back-to-back loans reflecting false collateral,

MEMORANDUM

To: George Terwilliger, Deputy Attorney General
Bob Mueller, Assistant Attorney General, Criminal Division
F. Dennis Saylor, Special Counsel, Criminal Division
Paul L. Maloney, Deputy Assistant Attorney General
Shirley D. Peterson, Assistant Attorney General, Tax Division
James Bruton, Deputy Assistant Attorney General, Tax Division
Doug Tillett, Director, Office of Public Affairs

Fr: Dexter Lehtinen
United States Attorney
Southern District of Florida

Date: November 19, 1991

RE: Sealing of BCCI Indictment

For your information, the indictment of BCCI and individuals (which was sealed last Thursday, November 14, 1991) is likely to REMAIN SEALED for several weeks.

We believe that an individual named in the indictment may return from Pakistan in the next several weeks, at which time he can be apprehended. This defendant has filed for unemployment compensation in California and his children live there with him, so we believe he will return.



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 22, 1992

Honorable John F. Kerry
Chairman
Subcommittee on Terrorism, Narcotics and
International Relations
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request at the Subcommittee hearing on May 14, 1992, for copies of correspondence between Department of Justice headquarters and the United States Attorney's Office for the Southern District of Florida regarding a proposed tax indictment of BCCI and others and enforcement of certain subpoenas for foreign records. Enclosed are copies of letters retrieved from the files of the Tax Division, Criminal Division and Office of the Deputy Attorney General, all of which relate to the indictment filed against BCCI Holdings (Luxembourg) S.A. and three individuals on November 14, 1991. The documents have been marked to indicate their source within the Department. The markings "DAG", "T" and "C" indicate documents from the files of the Deputy Attorney General, the Tax Division and the Criminal Division respectively.

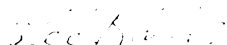
In addition, we are enclosing a letter (dated May 13, 1991) written to then Deputy Assistant Attorney General James Bruton in connection with a separate tax prosecution of two individuals. Mr. Dexter Lehtinen referred to this letter during his testimony at the hearing on May 14, 1992. The Tax Division is continuing to review its files relating to other cases and investigations in the Southern District of Florida, and if any other correspondence concerning the BCCI tax indictment is located, we will advise the Subcommittee.

Portions of some of the enclosed letters and memoranda have been redacted because they contain grand jury information protected by Rule 6(e), Federal Rules of Criminal Procedure; tax return information protected by Title 26, United States Code, Section 6103; or information the disclosure of which could compromise ongoing criminal investigations and prosecutions. The Department is working on your request for correspondence

concerning enforcement of various subpoenas issued by the United States Attorney's Office for the Southern District of Florida, and will respond shortly.

Please do not hesitate to contact me if you have any questions about this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "W. Lee Rawls".

W. Lee Rawls
Assistant Attorney General

Enclosures

cc: Honorable Hank Brown



U.S. Department of Justice

 United States Attorney
 Southern District of Florida
 T

 155 South Miami Avenue, Suite 700
 Miami, Florida 33130

May 13, 1991

James A. Bruton
 Deputy Assistant Attorney General
 Department of Justice
 Tax Division
 Room 4143
 Washington, D.C.

Re: Proposed Prosecution of [REDACTED]
 and [REDACTED]

Dear Mr. Bruton:

There is currently pending in the Southern District of Florida a proposed prosecution of the above referenced targets, which the Tax Division has under consideration. This case, which arises from a grand jury investigation, is of the greatest interest and significance to this district, and I write to convey the reasons that this office strongly urges approval by your division for prosecution.

This office has proposed prosecution of [REDACTED] for an audacious tax fraud that resulted in attempted evasion of corporate and personal taxes on more than [REDACTED] in unreported income. Far from being a technical case, it essentially is a case of [REDACTED]
 He [REDACTED]
 carried out the fraud over a four-year period.

This matter is an outgrowth from, and a potential vehicle to crack open, an ongoing investigation of the highest importance into institutionalized money-laundering by Bank of Credit and Commerce International (BCCI). A Title 18 criminal investigation into BCCI was entered into in this district in 1989. In approximately August, 1989, approval was granted for grand jury investigation into tax offenses by [REDACTED] in approximately October, 1990, this authorization was expanded to cover [REDACTED]

The BCCI investigation is one of paramount importance, and at present prosecution of [REDACTED] is one of the government's best

prospects for making this case. [REDACTED] was one of [REDACTED] principal customers at BCCI's [REDACTED] branch; [REDACTED] If the government can exact his cooperation and truthful testimony through a prosecution of him, [REDACTED] stands in a position to provide devastating testimony as to an array of abusive banking practices and international money laundering by BCCI. Conversely, if prosecution of [REDACTED] cannot go forward, the government's investigation into BCCI will be severely impeded.

The [REDACTED] matter has been carefully investigated by top-caliber personnel both at the IRS and in this office. Extensive grand jury and other investigative work has been done, and strong evidence has been developed.

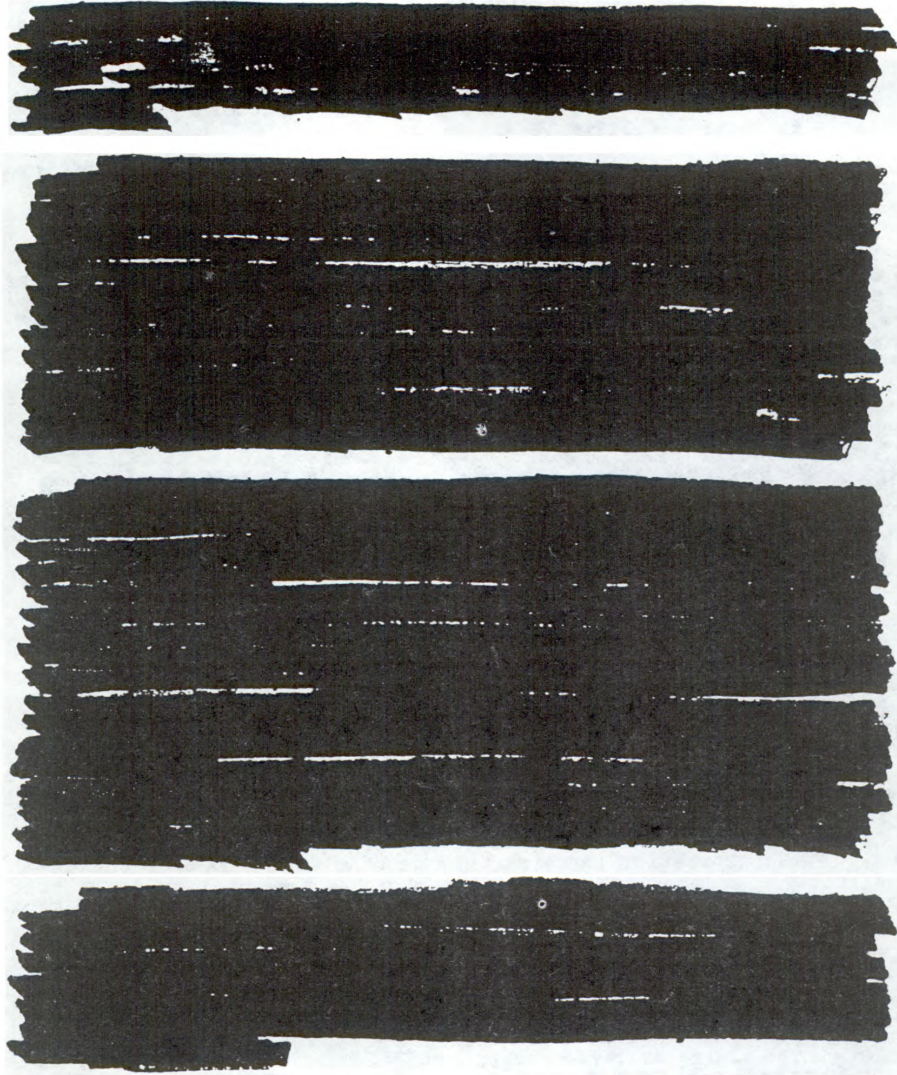
Although your division's review is not complete, this office has been in close communication with your reviewers, and we are aware that there are aspects of the proposed prosecution that give your reviewers pause. There also have been some factual misunderstandings. I believe that this may partly be due to the short time frame for review of this matter. The SAR was completed and made available to your division April 15, but substantive review of it did not begin in the division until last week; the statute of limitations begins to expire May 16, 1991. The grand jury is reconvening May 15, and that is the last possible day for indictment before the statute of limitations begins to run. Where there have been factual misunderstandings, we have endeavored to clear them up by consultation with the Tax Division reviewers.

THE CASE

The evidence gathered in this investigation establishes that [REDACTED] and [REDACTED], [REDACTED], conspired to and did evade more than [REDACTED] dollars in federal income taxes owed by [REDACTED] personally and by his corporation, [REDACTED]. This investigation has produced substantial proof of the guilt of [REDACTED] and [REDACTED] consisting of strong [REDACTED]

[REDACTED] also has criminal tax liability for attempted evasion of his personal taxes, due on unreported income in the form of [REDACTED] he received from [REDACTED] for facilitating [REDACTED]'s tax crimes.

In essence, the evidence shows that [REDACTED] established [REDACTED] corporation in September of 1983, [REDACTED]



THE PROOF¹

The extensive grand jury investigation here has produced substantial evidence establishing both a prima facie case and a reasonable probability of conviction, the standards for review by your division, as set forth at the United States Attorney's Manual, Title 6, section 4.213.

[REDACTED]

Evidence on these charges is both direct and circumstantial. Your division's reviewer has expressed misgivings as to the credibility of [REDACTED]

But quite apart from [REDACTED] is firmly established by the circumstantial evidence, and by the direct evidence from other witnesses.

[REDACTED]

[REDACTED]

¹This discussion concerns only proof of the proposed charges directly. It should be noted that there is powerful evidence of other wrongs which would be adduced at trial pursuant to Fed. R. Evid. 404(b). The 404(b) evidence on [REDACTED] includes, among other things: [REDACTED]

The 404(b) evidence regarding [REDACTED] includes, inter alia, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

In sum, as to [REDACTED] there is substantial evidence which clearly makes out a prima facie case. Moreover, the evidence also would easily take the government past a Rule 29 motion.

Finally, the direct evidence of [REDACTED]

is damning. [REDACTED]

II. [REDACTED]

There is no doubt that [REDACTED]

The evidence again establishes both a prima facie showing and more on the issue that [REDACTED]

They show that:

(1) [REDACTED]

(2) [REDACTED]

(3) [REDACTED]

[REDACTED] has given a deposition on these matters, which troubled your reviewer due to his account having been elicited by heavily leading questions. On May 10, however, [REDACTED] testified before the grand jury. His account there was not extracted solely by leading questions, but was independent [REDACTED]

(4) [REDACTED]

(5) [REDACTED]

(6) [REDACTED]

(7) [REDACTED]

[REDACTED] should not bar prosecution. [REDACTED] Furthermore, case presents special considerations which magnify the seriousness of his conduct. [REDACTED]

III. [REDACTED]

The evidence concerning these charges overlaps significantly with that described for the other charges discussed. Indeed, it is largely the "flip side" of [REDACTED]

The reviewer may have misunderstood [REDACTED] stated defense. The reviewer has described it as [REDACTED]

[REDACTED], but [REDACTED] actually admitted that [REDACTED]. Rather, the defense asserted by [REDACTED] is that [REDACTED]

Yet searches conducted of [REDACTED] conducted in a related case turned up no evidence [REDACTED] of [REDACTED]

As for the question of [REDACTED]

For calendar years [REDACTED]; as to these years, this office proposes [REDACTED] charges. [REDACTED]

District counsel declined to recommend prosecution on the [REDACTED] counts, and articulated uncertainty, and the prospect for [REDACTED] on [REDACTED] part, arising from a change in [REDACTED] in the law concerning legal residency of an alien. But this issue, and the change in the law, relate only to reporting of worldwide income, which is irrelevant to this case. [REDACTED]

[REDACTED] residence status is no legal significance as to [REDACTED] and no purported [REDACTED] on [REDACTED] part as to his resident or non-resident status provides a defense to [REDACTED]

For all the reasons stated above, I believe that prosecution of [REDACTED] and [REDACTED] is appropriate and should be authorized. [REDACTED] sought to perpetrate a blatant fraud on the Treasury of the United States, and "vigorous enforcement of the internal revenue laws," as prescribed by the Federal Tax Enforcement Program at USAM 6-4.010 calls for his

prosecution, and prosecution of the corrupt [REDACTED] who facilitated his crime [REDACTED]. The case is important not only in its own right, as a blatant, multi-million dollar tax fraud, but also as a steppingstone to BCCI, a tax investigation of the highest national importance.

I urge that the Tax Division authorize this prosecution. I also request to be notified, through the assigned AUSA, of your decision as soon as it is made.

Yours truly,


DEXTER W. LEHTINEN
UNITED STATES ATTORNEY

cc: J. Randolph Maney

Memorandum

Subject	Date
BCCI Investigation	May 21, 1991

To
 G. Allen Carver, Jr.
 Deputy Chief
 Frauds Section
 Department of Justice

From
 Andres Rivero, AUSA *AR*
 Economic Crime Division
 S.D. of Florida

I write in response to your request, made on May 9, 1991, for a brief report on the scope and status of the grand jury investigation being conducted in the Southern District of Florida into the activities of the Bank of Credit and Commerce International ("BCCI"). As we discussed earlier today, this memorandum contains sensitive and secret grand jury information which may not be disclosed unless disclosure is authorized under Federal Rule of Criminal Procedure 6(e). The matter was opened in August, 1989, as a Title 18 criminal investigation into institutionalized money-laundering on the part of BCCI and its officers. Given the February, 1990, plea agreement entered into by BCCI in the Middle District of Florida, the investigation has since been on a back-scan basis. There are serious allegations concerning drug money-laundering and other federal offenses.

At present, the investigation revolves around the accounts of [redacted] customers of the BCCI Miami and Boca agencies. As to each customer, evidence has been developed that [redacted]. As to these customers, witnesses have or are prepared to testify that [redacted].

According to [redacted], the tax evasion scheme operated on the following general principles. [redacted]

[REDACTED]

At this point, the special agents assigned to the case have begun preparation of the Special Agent's Report required for tax prosecutions. At the same time, investigation continues before a federal grand jury in Miami.

[REDACTED]

I intend to seek the BCCI records wherever they are located.

Although I had earlier hoped to be in a position to present charges against BCCI to the grand jury by June of this year, that schedule now appears to be overly optimistic. Please feel free to contact me at FTS 350-7783 if I can provide any additional information.

DOCUMENTS ON MIAMI-DOJ RELATIONS IN CENTRUST AND BCCI INVESTIGATIONS

LIST OF DOCUMENTS

Letter #1 -- March 26, 1991, to Harris (OIA), from Lehtinen/Sullivan, re: request to enforce BCCI subpoenas in Centrust investigation

Letter #2 -- March 26, 1991, to Harris (OIA), from Lehtinen/Rivero, re: request to enforce BCCI subpoenas in BCCI investigation

Letter #3 -- May 13, 1991, to Bruton (Tax Div), from Lehtinen, re: requesting permission to indict Bilbeisi (BCCI customer) tax prosecution (objecting to Tax Division's declination of Bilbeisi prosecution)

Letter #4 -- August 2, 1991, to Mueller (AAG, Criminal Div, from Lehtinen, re: repeated request to enforce all BCCI subpoenas

Letter #5 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: requesting permission to indict Altemar (BCCI customer) tax prosecution and BCCI tax investigation

Letter #6 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: requesting permission to indict Wyser-Platt (BCCI customer) tax prosecution and BCCI tax investigation

Letter #7 -- August 2, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: repeat requesting permission to indict Bilbeisi (BCCI customer)

Letter #8 -- August 5, 1991, to Peterson (AAG, Tax Div) and Mueller (AAG, Criminal Div), from Lehtinen, re: expedited Tax Div review of BCCI tax indictment and grand jury expansion

Letter #9 -- August 19, 1991, to Urgenson (Chief, Frauds Sec, Criminal Div), from Lehtinen/Heck, re: consolidating and coordinating all document requests through DOJ Frauds Sec

Letter #10 -- August 19, 1991, to Clark (Frauds Sec, in charge of coordination document requests), from Lehtinen/Sullivan, re: consolidated document requests

Letter #11 -- August 22, 1991, to Saylor (DOJ), from Lehtinen, re: confirming AG's order not to indict BCCI and statute of limitations problem

Letters #11A through #11F -- August 22, 1991, to Terwilliger, Smietanka, Keeney, Bruton, Peterson, and Saylor, from Lehtinen, re: statute of limitations problem and enclosing letter #11

Letter #12 -- August 23, 1991, to Lehtinen, from Bruton (Tax Div), re: BCCI indictment

Letter #13 -- September 25, 1991, to Carey (Dep AG's Office), from Lehtinen, re: requesting decision to indict BCCI by September 27

Letter #14 -- November 6, 1991, to Lehtinen, from Terwilliger (Dep AG), re: deferring to Lehtinen on BCCI prosecution

Letters #15A and 15B -- November 8, 1991, to Mueller (AAG, Criminal Div) and Peterson (AAG, Tax Div), re: BCCI indictment scheduled for November

Document #16 -- August, 1991, proposed indictment of three BCCI entities

Document #17 -- November 14, 1991, final indictment of one BCCI entity

Memorandum #18 -- November 19, 1991, from Lehtinen, re: Lehtinen decision to seal BCCI indictment

Document #19 -- April 16, 1991, DOJ Legal Evaluation of Lehtinen/ Miami US Attorney's Office

Memorandum

Subject Investigative Plan for Miami Tax	Date July 31, 1991
To Robert S. Mueller, III Assistant Attorney General Criminal Division	From Mary K. Butler AR Andres Rivero Assistant U.S. Attorneys Economic Crime Division

As requested, we have prepared the following written investigative plan. The plan proposed is necessarily skeletal and tentative given the short time in which it was prepared.

1. Nature of the allegations.

The investigation relates to allegations of tax evasion on the part of various U.S. taxpayers who were customers of the Miami and Boca Raton agencies of BCCI. In essence, the allegations are that BCCI bankers marketed BCCI as a confidential financial conduit for the funds of U.S. tax evaders. The specific charges contemplated are violations of U.S.C. §7201, 26 U.S.C. §7206, 18 U.S.C. §2 and 18 U.S.C. §371. Money-laundering violations under 18 U.S.C. §1956 may also be chargeable although that has not been our focus because of the potential double-jeopardy consequences of BCCI's plea in the Middle District of Florida.

2. Targets and subjects.

- A. BCCI itself;
- B. The following BCCI bankers;
 - 1. Saad Shafi, Sr.;
 - 2. [REDACTED];

3. Nadim Hassan;
4. [REDACTED];
5. Tariq Jan;
6. [REDACTED];
7. [REDACTED];
8. [REDACTED], and
9. [REDACTED];

C. BCCI customers;

1. Jaime Gaviria;
2. [REDACTED];
3. [REDACTED];
4. [REDACTED]; and
5. [REDACTED].¹

3. Principal Witnesses.

1. [REDACTED];
2. [REDACTED];
3. [REDACTED];
4. [REDACTED]; and
6. [REDACTED].²

¹ Additionally, three customers, Stephen Calderon, Jose Otano, and Joseph Villalba have pled guilty, [REDACTED] and been sentenced. A complaint has been lodged against another customer, Munther Ismail Bilbeisi.

² Potential witnesses include [REDACTED], [REDACTED] and [REDACTED].

INVESTIGATIVE PLANA. Bilbeisi and Grushoff

Bilbeisi was one of two principal BCCI customers in Florida (along with [REDACTED]); Grushoff was Bilbeisi's accountant. Both have been complained against on their own major tax fraud scheme (not involving BCCI). The plan, as recently as this past Friday, [REDACTED]. [REDACTED]. Grand jury time is reserved for Friday afternoon, August 9, 1991, for presentation of a proposed indictment.³

B. [REDACTED]/Calderon/Otano/Villalba/[REDACTED]

Investigation is substantially complete as to the transactions these individuals had with BCCI. The [REDACTED] SAR was submitted to the Tax Division more than one year ago and was returned for further investigation many months later. Calderon, Otano and Villalba have pled to their own tax crimes and [REDACTED]. [REDACTED]. The prosecution strategy regarding these transactions is to [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

³ Two SARs have been submitted for [REDACTED] in this case. Each has agreed to plead guilty to tax evasion. [REDACTED]. One SAR, for Louis Altemar, has been pending with the Tax Division for approximately one month. The other, for Tony Aramburo, is with IRS District Counsel.

The plan is to interview a few more witnesses ([REDACTED]), [REDACTED], [REDACTED], synthesize the evidence and prepare an indictment as soon as we can get Tax Division approvals.

C. [REDACTED]

Each of these is a major customer target and a case on any one of them would substantially expand the indictment discussed in section B. Significant investigation remains to be done on each.

As to each, we intend to obtain overseas BCCI bank records through consents, letters rogatory or informal channels.⁴ AUSA Butler and the case agent will travel to the United Kingdom and other countries to attempt to obtain those records as soon as it is possible to do so. Various witnesses ([REDACTED]) need to be interviewed as well



U.S. Department of Justice

United States Attorney

RECEIVED
Southern District of Florida
1991 AUG 20 AM 9 54

U.S. ATTORNEY
155 South Orange Avenue, Suite 200
COURTNEY S. KIRBY OF FL.
Miami, Florida 33130

August 19, 1991

Peter Clark, Deputy Chief
Frauds Division
U.S. Department of Justice
Bond Building
1400 New York Avenue, N.W.
Washington D.C. 20038

Re: CenTrust/BCCI

Dear Mr. Clark:

Further to your role as coordinator of requests for information and documents from the Special Frauds Office in England, you met with AUSA Cheryl Bell, FBI Special Agent Brian Jerome and representatives of the SFO on August 6, 1991. It is my understanding that during that meeting, the SFO representatives indicated that British law enforcement authorities had obtained, pursuant to a search warrant, certain BCCI files relating to CenTrust. It is specifically my understanding that some of the documents related directly to CenTrust's 1988 issuance of subordinated debentures, of which BCCI nominally owned \$25 million. Other records, I am led to believe, pertain to certain "options" involving CenTrust. I understand that, during the meeting, the British authorities indicated a willingness to provide to us the entirety of their CenTrust-related BCCI documents subject to an appropriate request from the Department of Justice.

As you undoubtedly know, I have been seeking to obtain the BCCI documentation of the \$25 million sub-debt purchase since August, 1990. Your assistance in obtaining these records as soon as humanly possible is requested.

I also have a general interest in any other transactions directly involving BCCI and CenTrust, given Ghaith Pharaon's position at CenTrust and his relationship to BCCI. I would thus ask that you also attempt to obtain expeditiously any and all other documents in the possession of the SFO which might pertain to CenTrust or David Paul, including the "options" file, any documents relating to BCCI's purchases and sales in 1987 and 1989 of certain CenTrust zero coupon bonds, due February 15, 2010, as well as any records reflecting transactions by BCCI or Pharaon involving the

common stock of Hercules, Inc.


I enclose herewith a letter Caroline Heck recently wrote to Larry Urgenson, in connection with the Department of Justice's proposed document requests to the BCCI liquidators. Attached to the letter are the attachments to the grand jury subpoenas which we served on BCCI, as well as a new "Attachment C", which outlines in more specificity the other, "non-subordinated debenture" documents that we seek from BCCI. I am assuming that, in addition to the Department's requests to the BCCI liquidators, you will be making parallel law-enforcement-to-law-enforcement requests to any other law enforcement authorities we are coordinating with worldwide on the BCCI matters, including, besides the SFO, the appropriate authorities in France (where the subject sub-debt transaction occurred) and the Cayman Islands (from whence the sub-debt financing was ultimately obtained).

In addition, I await receipt of a copy of the Price Waterhouse report, which I understood from AUSA Bell you would be sending directly to us.

Thank you in advance for your prompt attention to these matters.

Sincerely,

DEXTER W. LEHTINEN
UNITED STATES ATTORNEY


ALLAN J. SULLIVAN
ASSISTANT UNITED STATES ATTORNEY

cc: Dexter Lehtinen
Caroline Heck
Cheryl Bell



U.S. Department of Justice

Tax Division

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

SEP 10 1991

Dexter W. Lehtinen
United States Attorney
Southern District of Florida
155 South Miami Avenue
Miami, Florida 33130

Re: Proposed Prosecution of BCCI Holding
(Luxembourg) S.A., et al.

Dear Mr. Lehtinen:

We appreciate your taking time to meet with us on September 5, 1991, to discuss the proposed prosecution of BCCI Holdings (Luxembourg) S.A., Nadim Hasan, Tariq Jan, and Shaikh Shafi. The discussion was most informative and helpful. Many issues were discussed and a large quantity of information was provided to us during a relatively short period of time. Since much of the information was provided in summary fashion, and to assure that we are not overlooking or misunderstanding any of the factual or legal issues you described in our meeting, we would like you to provide us with a written submission discussing the issues and providing references to the relevant exhibits and transcript pages. In particular, the submission should include the following:

(1) A final draft of the proposed indictment based upon the evidence and legal theories discussed in our meeting;

(2) A transcript of the Rule 11 hearings pertaining to [REDACTED] and [REDACTED];

(3) The legal and factual authority for prosecuting BCCI Holdings (Luxembourg) S.A., including the legal basis for asserting that [REDACTED]

(4) Information as to whether the holding company was dismissed from the Tampa indictment, and if so, the reason for such dismissal;

Dexter W. Lehtinen
September 10, 1991
Page 2

(5) The position of state and federal bank regulators concerning [REDACTED];

(6) Since you did not discuss the issue in our September 5 meeting, we assume that you do not propose to charge any offenses under 26 U.S.C. §7206(2); if this is incorrect, please address the issues raised by the Internal Revenue Service concerning [REDACTED];

(7) A discussion of your position with respect to whether these financial institutions were required [REDACTED];

(8) Copies of the evidence showing that [REDACTED] and [REDACTED] of BCCI Holdings were involved in or promoted the alleged fraud;

(9) A description of how your office intends to handle the concerns we expressed in our September 5 meeting relating to the likely trial testimony of [REDACTED];

(10) Testimonial and other evidentiary references in which [REDACTED] details meetings and discussions with other BCCI officials that establish the proposed conspiracy;

(11) The specific evidence that establishes that [REDACTED];

(12) A copy of [REDACTED];

(13) Testimonial references supporting the assertion that [REDACTED];

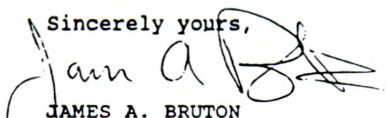
(14) Testimonial references in which [REDACTED] details his 1988 discussion with [REDACTED] regarding [REDACTED];

Dexter W. Lehtinen
September 10, 1991
Page 3

(15) A copy of the [REDACTED] memorandum to the file
regarding the [REDACTED]
[REDACTED]

This information is necessary for us to make a determination whether to authorize the proposed criminal prosecution. We will continue to make our review of this proposed prosecution our highest priority. Please feel free to submit any additional materials or reference any other testimony you believe will assist us in making our determination. If you have any questions, please do not hesitate to call.

Sincerely yours,


JAMES A. BRUTON
Deputy Assistant Attorney General
Tax Division



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

MAY 13 1992

Honorable John F. Kerry
Chairman
Subcommittee on Terrorism, Narcotics and
International Relations
Committee on Foreign Relations
United States Senate
Washington, D.C. 20510-6225

Dear Mr. Chairman:

This will respond to your letter of April 2, 1992, to Attorney General Barr, requesting that the Department of Justice transmit a list of questions concerning Banque de Commerce et Placement to Swiss authorities under the Mutual Legal Assistance Treaty (MLAT). You requested that the questions be submitted on behalf of the Subcommittee on Terrorism, Narcotics and International Operations in connection with its ongoing investigation of the Bank of Credit and Commerce International.

Regrettably, the Department of Justice is unable to process your request under the MLAT in force between Switzerland and the United States. The Treaty Between the United States of America and the Swiss Confederation on Mutual Assistance in Criminal Matters, in effect since January 23, 1977, is designed to provide mutual assistance in criminal matters for law enforcement and prosecutive agencies. Thus, Article 1(1) limits such assistance to:

- (a) investigations or court proceedings in respect of offenses the punishment of which falls or would fall within the jurisdiction of the judicial authorities of the requesting State or a state or canton thereof . . .

The Justice Department, the Central Authority for the United States under the treaty, is obligated to screen all requests for assistance and to process only those which comply with the terms and conditions of the treaty. In this connection, Article 28 provides that:

- (2) Such requests which are approved by the Central Authority of the requesting State shall be made by that Authority on behalf of federal, state or cantonal courts or

- 2 -

authorities which by law have been authorized to investigate or prosecute offenses.

Further, the United States is obligated to use such assistance as is provided pursuant to the treaty solely for the purposes intended by the treaty. Article 5 states as follows:

(1) Any testimony or statements, documents, records or articles of evidence or other items, or any information contained therein, which were obtained by the requesting State from the requested State pursuant to the Treaty shall not be used for investigative purposes nor be introduced into evidence in the requesting State in any proceeding relating to an offense other than the offense for which assistance has been granted.

A Congressional inquiry does not comply with the terms of the treaty. Although the language of the treaty does not specifically preclude assistance on behalf of Congress, the treaty was not intended for use by legislative bodies which are not charged with the responsibility of investigating and prosecuting criminal violations. Moreover, the Federal Department of Justice and Police -- the Swiss Central Authority -- has previously advised the Department of Justice that Congressional access to assistance provided pursuant to the treaty is not authorized by the treaty and, in fact, would violate its terms. Thus, in 1987 the Justice Department was compelled to deny a request from the House Select Committee to Investigate Covert Arms Transactions with Iran for access to assistance provided by Switzerland pursuant to the treaty.

I have enclosed a copy of the MLAT for your information. If you have any questions regarding this or any other matter, please do not hesitate to contact this office.

Sincerely,



W. Lee Rawls
Assistant Attorney General

Enclosure

Mr. LEHTINEN. Yes, thank you.

Senator KERRY. Thank you very much. We will now move on to the next panel.

Mr. Mattingly and Mr. Stone, could I ask you to stand so I could swear you in? [Witnesses sworn.]

Senator KERRY. If you could each identify yourselves for the record.

TESTIMONY OF JAMES VIRGIL MATTINGLY, JR., GENERAL COUNSEL, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. MATTINGLY. I am James Virgil Mattingly. I am general counsel of the Federal Reserve Board here in Washington, DC.

Mr. STONE. I am John W. Stone, Director, Supervision, for the FDIC also here in Washington.

Senator KERRY. Gentlemen, obviously you have both had an ongoing relationship and concern about this case. We want to try to assess today in the aftermath of the agreements and of the liquidator's involvement and the global agreement a sense of where we are with respect to the case, and I would like to just ask a few general questions first of all to put your agencies' involvements in their proper perspective, both Federal Reserve and the FDIC.

Let me perhaps begin with you, Mr. Mattingly. Would you share with us how important the Federal Reserve views the BCCI case and where it fits on the scale of their international concerns of this type?

Mr. MATTINGLY. Well, I think as we have testified before, this BCCI investigation and the various matters that have flowed from that investigation are a matter of the highest priority for the Federal Reserve. The system has devoted enormous resources to the investigation. We have put our best people on it. We have devoted all the resources that the investigation needs. We have learned many things from the investigation.

One of the things that flowed from the investigation was the Board's proposal that the laws that govern foreign bank operations in the United States needed to be strengthened and we recommended a proposal to do that. It was cosponsored by you, and it was passed in the—late last year by the Congress and is being implemented by the Fed presently.

Senator KERRY. Mr. Stone, do either of you want to make a brief opening—I apologize. I did not mean to cut you off.

Mr. MATTINGLY. I have a summary of my prepared statement. I assume that the long statement would be incorporated in the record.

Senator KERRY. Your full statement will be placed in the record as if read, in both cases. If you would like to make a quick summary, that would be fine. I know we do have a fair amount of area to cover, but we would be happy to have you do that.

Mr. MATTINGLY. It's up to you, Senator.

Senator KERRY. Well, maybe it would be helpful if we moved to specific areas the committee wants to focus on, and I think your statements can stand for themselves.

[The prepared statement of Mr. Mattingly follows:]

PREPARED STATEMENT OF J. VIRGIL MATTINGLY, JR.

Mr. Chairman, I am pleased to appear again before this Subcommittee to report on the Federal Reserve's actions regarding the Bank of Credit and Commerce International. Since last appearance on August 1, 1991, the Federal Reserve has continued to investigate the circumstances under which BCCI gained control of the shares of U.S. banking organizations, to prosecute enforcement actions against those responsible for wrongdoing by BCCI, and to work to ensure the separation and insulation of U.S. banking organizations from BCCI. Substantial progress has been made on each of these fronts, including most recently shareholder approval of the Federal Reserve's proposal for an independent trustee to hold the shares of the First American banks. Today, I will provide a status report on the investigation and describe the actions the Federal Reserve has taken to date regarding the First American banks and Independence Bank.

FEDERAL RESERVE ENFORCEMENT ACTIONS

The Federal Reserve is actively and aggressively pursuing its investigation of BCCI and those who assisted it in illegally and secretly gaining control of the shares of U.S. banking organizations. Because the investigation is ongoing, I must refrain from divulging details that could prejudice our case or the cases of the other law enforcement officials with whom we are working. I can, however, describe the charges that have been made public and the extent of the investigation to date.

As you may recall, the Federal Reserve, on July 12, 1991, acting on the basis of its investigation of the BCCI matter over the preceding months, took enforcement action against four individuals for their involvement with BCCI's illegal acquisition of the Independence Bank, Encino, California. These individuals were Agha Hasan Abedi and Swaleh Naqvi, the two former senior officers of BCCI; Kemal Shoaib, a former senior officer of BCCI and the former chairman of Independence Bank; and Ghaith Pharaon, a Saudi Arabian businessman who was the owner of record of Independence Bank and a shareholder of BCCI. The Federal Reserve's notice alleged that these individuals arranged for Pharaon to acquire Independence Bank on behalf of BCCI, thus establishing BCCI as an illicit bank holding company in violation of the Bank Holding Company Act and Federal Reserve regulations. The notice further alleged that these individuals concealed this illegal transaction from the FDIC, the primary federal regulator of Independence Bank, as well as from the Federal Reserve.

An additional notice was issued on July 29, 1991, alleging that BCCI had illegally acquired control of the shares of National Bank of Georgia, CenTrust Savings Bank, and Credit and Commerce American Holdings, N.V. ("CCAH"), the parent holding company of First American Bankshares. The Federal Reserve assessed a \$200 million civil money penalty against BCCI and initiated proceedings against nine individuals associated with BCCI to bar them from any future involvement with U.S. banking organizations. These individuals included Kamal Adham, Faisal Saud Al-Fulaij, A.R. Khalil, and Sayed Jawhary, each of whom the Federal Reserve alleged served as a nominee for BCCI in acquiring shares of CCAH, and five others, including Abedi and Naqvi.

At the request of the Justice Department, which had concerns about double jeopardy in the event of a criminal prosecution, the Federal Reserve deferred an assessment of civil money penalties against these individuals. In September 1991, following the Justice Department's withdrawal of its request for deferral with respect to Shoaib and Pharaon, the Federal Reserve assessed civil money penalties of \$20 million against Shoaib and \$37 million against Pharaon in connection with the Independence Bank acquisition. These assessments are in addition to the \$200 million assessed against BCCI. The Federal Reserve, represented by the Justice Department, moved in U.S. District Court to freeze the U.S. assets of Shoaib, including certain deposit accounts. A freeze order was entered on October 15, 1991. In March of this year, the Federal Reserve entered a default judgment against Shoaib, following the recommendation of the administrative law judge assigned to the case. The Justice Department is now pursuing collection actions against assets belonging to Shoaib.

On September 17, 1991, the Federal Reserve, again represented by the Justice Department, moved in U.S. District Court to freeze substantially all of the U.S. assets of Pharaon, and a freeze order was entered on that same day. Pharaon's frozen assets represent an amount greater than the penalty assessed against him, although there are competing claims to the assets. Pharaon has, through counsel, contested the charges against him in both the action for civil money penalties and the action seeking to bar him from U.S. banking. A substantial motions practice has taken

place before the administrative law judge, and dispositive motions by Pharaon and the Federal Reserve are currently pending.

As for the other individuals the Federal Reserve has charged in the matter, Adham and Jawhary have filed answers contesting the Federal Reserve's July 29 charges, and one other respondent has consented to the entry of a cease-and-desist order. Service of other respondents has proven difficult, as they are generally located in the Middle East. However, with the assistance of the Department of State, several respondents have been located and served, and efforts are continuing to effect service on the remaining respondents. The Federal Reserve has also moved for a default judgment against Abedi and Naqvi, who have been served.

On December 19, 1991, the fiduciaries appointed by the courts in England, Luxembourg and the Cayman Islands to administer BCCI's affairs in liquidation entered into an agreement with the Justice Department, the New York County District Attorney, the Federal Reserve, and various federal and state regulatory agencies whereby BCCI agreed to plead guilty to federal and state criminal charges and to forfeit its assets in the United States, estimated at over \$500 million. The agreement was approved and the conviction entered by the United States District Court for the District of Columbia on January 24, 1992, and the appropriate New York court on December 20, 1991. Under the agreement, BCCI also consented to the Federal Reserve's \$200 million civil money penalty action, with the Federal Reserve agreeing to stay collection of the penalty in light of the forfeiture to the Justice Department of BCCI's U.S. assets.

I would note that the Board agreed to the settlement because it achieved the Federal Reserve's three primary aims. First, the assets forfeited under the plea agreement establish a fund that is available to provide additional capital support to U.S. banking organizations illegally acquired by BCCI. Second, the court-appointed fiduciaries agreed to comply with the Federal Reserve's March 4 order, which requires BCCI to divest its interest in CCAH, First American Bankshares' parent holding company. Third, as part of the agreement, the court-appointed fiduciaries for BCCI agreed to cooperate in the Board's investigation of violations of U.S. banking laws and thereby to provide certain BCCI documents that we have been seeking for some time.

Even as adjudication of the charges the Federal Reserve has brought to date proceeds, the Federal Reserve continues its investigation of BCCI and those responsible for its illicit activities in the United States. Federal Reserve investigators and examiners have travelled throughout the United States and to several foreign nations to compile evidence regarding BCCI's illegal acquisition of U.S. banking organizations. To date, Federal Reserve investigators have interviewed more than 60 individuals, issued more than 75 subpoenas for the production of documents, and taken numerous formal depositions comprising thousands of pages of testimony. Federal Reserve investigators have also reviewed hundreds of thousands of pages of documents.

The Federal Reserve's investigators have sought the cooperation of foreign law enforcement and regulatory agencies. The Bank of England has been particularly cooperative. However, bank secrecy laws in other countries in which BCCI operated continue to hinder the ability of Federal Reserve investigators to obtain necessary information.

At home, the Federal Reserve's investigators have continued to work with both the New York County District Attorney's Office and the Justice Department, with whom the Federal Reserve has established excellent, cooperative relationships, to unravel the relationships of BCCI to U.S. banks.

FEDERAL RESERVE ACTIONS REGARDING U.S. BANKS

First American Banks.—Since the discovery in late 1990 of BCCI's control of certain shares of CCAH (First American Bankshares' parent holding company), the Federal Reserve has actively sought to achieve a complete legal separation of the First American banks from BCCI. Arranging for divestiture has been a difficult and complex process, plagued with uncertainties regarding the ownership of certain CCAH shares and involving many parties located in other countries, often with conflicting interests and claims. However, with the cooperation that the Federal Reserve has received from the Department of Justice and the New York County District Attorney, the shares of the First American banks should shortly be placed in the hands of an independent trustee with full authority to sell and convey title to the banks. The transfer of the banks to an independent trustee is designed to maintain public confidence in the banks by providing them with an effective and complete insulation from BCCI and related persons until they can be sold.

The process leading to the establishment of the trust began on March 4, 1991, when the Federal Reserve ordered BCCI to submit a plan to divest its interest in

CCAH. That order also restricted financial and other dealings between BCCI and the First American banks. BCCI submitted a plan in May 1991 that provided for a trust to hold the shares of CCAH and to sell the shares or assets of CCAH as soon as possible.

Before that plan could be implemented, however, BCCI was closed on July 5, 1991, by overseas banking authorities, and its affairs were placed in the hands of court-appointed fiduciaries in those foreign jurisdictions. Control of BCCI by the court-appointed fiduciaries achieved a limited separation of BCCI and the First American banks, but the Federal Reserve continued to seek divestiture so as to finally, completely, and irrevocably separate the two.

This effort was complicated by the fact that BCCI's interest in CCAH is not perfected, and the extent of that ownership interest is not clear. BCCI is not the record owner of any shares of CCAH; the shares of CCAH are registered in the names of various individuals and corporate entities. Rather, as the Board has charged, BCCI holds a beneficial interest—through nominee agreements and loans to shareholders—in over 50 percent of those shares. Thus, while the Federal Reserve might have attempted to force the court-appointed fiduciaries to sell BCCI's interest in CCAH, the fiduciaries would have first had to secure possession and title to the shares. Doing so would have entailed substantial litigation regarding precisely which CCAH shares were controlled by BCCI, as well as foreclosure proceedings to secure title to the shares apparently pledged to BCCI as collateral for loans to nominee shareholders. That process could easily have involved years of litigation.

Because of these problems, the Federal Reserve pushed for a transfer of control of the First American banks to an independent trust approved by the record holders of CCAH shares as the most expeditious method of achieving the divestiture on which the Federal Reserve insisted. This would enable the banks to be sold without the necessity of waiting for resolution of the various claims to the CCAH shares.

During the fall of 1991, the Federal Reserve and other involved parties agreed that divestiture of the First American banks could be achieved most expeditiously by transferring to a trust all of the shares of one of CCAH's subsidiary holding companies, First American Corporation, rather than transferring BCCI's undetermined interest in CCAH shares. First American Corporation is the immediate parent of First American Bankshares, the holding company that controls the First American banks.¹

This arrangement was deemed preferable to the transfer of BCCI's interest in CCAH because the trustee would receive 100 percent of the shares of a U.S. bank holding company, as opposed to BCCI's lesser and disputed interest in CCAH. The independent trustee would thereby gain full and absolute control of the First American banks and, because of this total control, would be able to effect a sale and convey clear title to the banks.

Early this year, an individual trustee was identified who was acceptable to all concerned, but major issues remained, including funding and indemnification for the trust. The Board believed that the plea agreement, which made funds forfeited by BCCI available to support the First American banks, provided a method to resolve these issues. The Justice Department provided significant assistance in this regard. The Department proposed that the trust arrangement be established through the U.S. District Court for the District of Columbia, which has jurisdiction under the BCCI plea agreement. The New York County District Attorney and the proposed trustee endorsed this proposal, as did the board of directors of First American Bankshares, which on April 30, 1992, recommended the proposal to the CCAH shareholders.

Because the trust arrangement required CCAH shareholder approval, the Board asked the managing directors of CCAH to call a special shareholders meeting to consider the proposal. The meeting was called for May 12, and record holders of nearly 80 percent of the shares of CCAH executed proxies directing the managing director of First American Corporation's immediate parent, CCAI, to transfer the shares of First American Corporation to an independent trustee. Three CCAH record shareholders that hold the remaining CCAH shares did not vote.

Under the terms of the trust agreement, the trustee will, as I have indicated, hold all of the shares of First American Corporation and have all the rights of a shareholder, including the exclusive right to vote the shares. The trustee is directed to cause the sale of the First American banks expeditiously, but within a 1-year period, and has the authority to transfer title to the banks without further CCAH share-

¹ First American Corporation is a wholly-owned subsidiary of Credit and Commerce American Investment, B.V. ("CCAI"), which is in turn a wholly-owned subsidiary of CCAH.

holder approval or authorization. The trust agreement also establishes a process for determining which shares of CCAH are controlled by BCCI for the purpose of distribution of the proceeds of any sale of the First American shares or assets held by the trust. The proceeds of any sale will be used to repay bona fide debts at the holding companies, with the balance held by the court for distribution to the legitimate shareholders of CCAH. Proceeds of the sale attributable to BCCI's interest in CCAH are forfeited to the Justice Department under the terms of the plea agreement.

Although the trustee now has authority to sell the banks, the universe of prospective purchasers for the banks may be somewhat reduced by federal law. Under the Douglas amendment to the Bank Holding Company Act, a bank holding company is prohibited from acquiring a bank in another state unless the acquisition is expressly permitted by the laws of the bank's home state. Virginia, in which a large percentage of First American's banking assets are located, permits the acquisition of banks in that state by holding companies only from the southeastern United States. Therefore, banking organizations in the rest of the country are generally ineligible to acquire the First American banks.

I should add that the Federal Reserve's protective actions regarding the First American banks have not been limited to arranging the trust. The Federal Reserve has continued to monitor the banks' financial condition, to help coordinate supervision of the banks among the relevant state and federal banking authorities, and to encourage actions to maintain the banks' capital. In this regard, over the last twelve months, First American management has arranged for the sale of individual First American banks. The Valley Fidelity Bank and Trust Company of Knoxville, Tennessee was sold on September 2, 1991, and the First American Bank of Pensacola was sold on January 15, 1992. In addition, substantially all of the assets of the First American Bank of Georgia were sold on May 1, 1992. These actions have resulted in a substantial decrease in the assets of First American Bankshares and have helped to maintain its capital position.

Independence Bank.—Beginning in August 1991, Federal Reserve staff began meeting with representatives of the FDIC, the Superintendent of Banks of the State of California, and the court-appointed fiduciaries for BCCI in order to obtain capital support for Independence Bank from the fiduciaries. Discussions proceeded through September and October, at which point the Justice Department entered the negotiations and was able to conclude the plea agreement described above. Although Independence Bank was ultimately closed by the State of California, the plea agreement that followed the Independence Bank negotiations provides a fund from BCCI's forfeited assets that is available for repayment to the FDIC of the costs of resolving the bank.

Cooperation of the Court-Appointed Fiduciaries and Abu Dhabi Shareholders.—In its efforts to effect the divestiture of BCCI's interest in the First American organization, the Federal Reserve has sought the cooperation of the court-appointed fiduciaries for BCCI and the Abu Dhabi shareholders of BCCI in connection with the trust proposal and other matters.

Soon after the fiduciaries' appointment on July 5, 1991, Federal Reserve staff contacted the fiduciaries to determine their intention with respect to the divestiture plan that had been submitted by BCCI prior to its closure. The fiduciaries responded that they would cooperate with the Board in its efforts to achieve a trust agreement, and have recently joined with the Federal Reserve and the other parties in supporting the trust arrangement described above as a means of complying with the Federal Reserve's March 1991 divestiture order and the plea agreement that incorporated that order. We also anticipate that the fiduciaries will provide certain BCCI documents that the Board has requested relating to the First American acquisition.

The principal shareholders of CCAH—the ruler of Abu Dhabi and his eldest son and the Abu Dhabi Investment Authority—have been responsive to the Board's requests regarding First American. Prior to the July 5 seizure of BCCI, the Abu Dhabi shareholders caused BCCI, which they then controlled, to grant Federal Reserve investigators access to many of the documents evidencing the BCCI nominee arrangements regarding First American and Independence Bank. The Abu Dhabi shareholders have also provided substantial financial support for the First American banking organization over the last eighteen months and have supported the Federal Reserve's efforts to put in place a trust arrangement, which would include a transfer of their CCAH shares to the trust.

The Federal Reserve has made requests to the Abu Dhabi government for access to certain BCCI documents located in Abu Dhabi that were earlier withheld by BCCI on grounds of privilege. Those documents have recently been transferred to the court appointed fiduciaries for BCCI, with whom the Board's request for access is pending. The Federal Reserve has also asked the Abu Dhabi government for

access to former BCCI officers who were instrumental in the acquisition of First American and other persons in Abu Dhabi who may have information regarding the acquisition. We are hopeful that favorable action will be taken on these requests in the near future.

EFFECT OF BCCI ON U.S. BANKING ORGANIZATIONS

One of the primary questions on which Federal Reserve examiners and investigators have focused is the degree to which BCCI affected the First American banks. The Federal Reserve has devoted considerable resources to determine whether and to what extent BCCI's illicit ownership resulted in harm to, or abuse of, the First American banks. More than 50 experienced examiners from the twelve Federal Reserve Districts have spent over eight man-years on examination of the First American Banks. Federal Reserve staff have also worked extensively with other federal and state banking authorities who have conducted examinations of the First American banks.

Federal Reserve examiners have checked for any business dealings between the First American banks and persons known or believed to be connected to BCCI. In addition, loan portfolios were sampled for any evidence of loans with poor payment histories, frequent renewals or preferential terms, and for any other questionable lending practices. The work of the Federal Reserve examiners has included, among other procedures, a review of all loans over \$50,000 that were charged off between 1982 and 1991, selected overdraft reports for the last three years, all large loans repaid within six months of the examination, large depositor and high activity accounts, personnel files and expense accounts, and Bank Secrecy Act procedures. Examiners also conducted an intensive review of wire transfer activities and reviewed real estate transactions, securities purchases and other large-asset transactions. The Federal Reserve's workpapers and methodology have been reviewed by the General Accounting Office and have been made available to this Subcommittee and others.

In addition to these efforts, during the last 18 months, each of the primary federal and state regulators for the First American banks has conducted one or more full-scope examinations, which included in-depth reviews of all the banks' significant credit and deposit relationships.

The Federal Reserve's examinations, and those of other federal and state regulators, have to date uncovered no evidence of abuse of the credit facilities of the First American banks for the benefit of BCCI or its affiliates. The examinations have not to date found any credits currently outstanding to BCCI or its affiliates other than the trade-related credits discussed below and a small payment under a letter of credit issued in connection with a lease. At the holding company level, however, the Federal Reserve is continuing to investigate the circumstances and terms under which First American Bankshares acquired the National Bank of Georgia in 1987 and the role BCCI or its agents played in the holding company's decision to make that acquisition.

Two of the First American banks have received additional scrutiny from the examiners: the First American Bank of New York, because it served as BCCI's correspondent bank in the United States, and the First American Bank of Georgia (formerly the National Bank of Georgia), because prior to its acquisition by First American Bankshares in 1987, Pharaon was the record owner.

In addition to the review procedures described above, Federal Reserve examiners reviewed all clearing transactions over \$100,000 by the New York subsidiary over a 2-year period. In addition, all transactions over \$1,000,000 for that period were analyzed by country of origin and country of disposition. This effort was undertaken to determine whether the clearing functions of that bank were being improperly used by BCCI.

The review indicated that only certain trade-related transactions between the First American Bank of New York and a subsidiary of BCCI resulted in a loss to the bank. Bankers acceptances issued by the First American Bank of New York on behalf of BCCI's Hong Kong subsidiary came due after BCCI was closed on July 5, 1991, and the BCCI subsidiary has not repaid the First American bank. The examinations produced no evidence that these transactions were undertaken other than in the ordinary course of business.

In its July 29 notice, the Federal Reserve alleged that BCCI participated in certain management decisions of the First American Bank of New York, including the selection of the senior management of the bank and the purchase of branches. The notice also alleged that two of the New York subsidiary's officers, who were former officers of BCCI, monitored the First American bank's operations for BCCI.

With regard to the First American Bank of Georgia, the examinations have not uncovered any direct loans to BCCI. Prior to the 1987 acquisition of the National

Bank of Georgia by First American Bankshares, however, there had been several instances of common loan customers between the National Bank of Georgia and BCCI, and in at least two instances the bank made loans secured by standby letters of credit issued by BCCI. There were also loans to interests of Pharaon. However, losses incurred on these loans have been minor, and only one such transaction since 1987 has surfaced.

The Federal Reserve also continues to investigate a lease of certain property from Pharaon entered into by the National Bank of Georgia in 1985, from which Pharaon appears to have benefited substantially. In addition, the National Bank of Georgia, before its acquisition by First American, hired several individuals who had previously been employed by BCCI, and there is evidence of BCCI influence over National Bank of Georgia's management when Pharaon was the record owner.

Independence Bank was not a member of the Federal Reserve System. As a non-member bank purporting to operate without a parent holding company, it was regulated by the State of California and the FDIC. Representatives of the FDIC will discuss the results of their investigation of Independence Bank. However, as noted above, the Federal Reserve has taken enforcement action against the former chairman of Independence Bank, Shoaib, charging him with having participated in BCCI's illegal acquisition of Independence Bank.

CHANGES IN FOREIGN BANK SUPERVISION

The Federal Reserve is currently implementing the Foreign Bank Supervision Enhancement Act of 1991, legislation cosponsored by Senator Kerry and passed by the Congress largely in reaction to conduct at BCCI and Banca Nazionale del Lavoro. The Act provides a process to control the entry into the United States of foreign banks and to strengthen the authority of the Federal Reserve to supervise and regulate foreign banks once they have entered. The new entry standards established under the Act include requirements of consolidated home country supervision and supervisory access to information regarding any foreign banking organization seeking to do business in the United States. The Act also applies to foreign banks the same financial, managerial and operational standards that govern U.S. banks. The Act grants federal regulators additional authority to terminate the U.S. activities of a foreign bank that is engaging in illegal, unsafe, or unsound practices.

In addition, the Act grants the Federal Reserve authority to examine any office of a foreign bank in the United States. The Federal Reserve is authorized to coordinate examinations with other federal and state supervisors, and is no longer directed to rely on the examinations of other supervisors in its examination of foreign banks. Each branch and agency of a foreign bank must be examined at least once during each 12-month period.

The Federal Reserve is working to strengthen significantly its supervisory capabilities and processes with respect to the operation of foreign banks in this country. For example, the Federal Reserve is in the process of expanding its examination staff to carry out its new examination responsibilities and has promulgated interim rules to implement the entry standards under the new Act. The Federal Reserve hopes that the enhanced capabilities and new entry standards will reduce the potential for a recurrence of problems such as those presented by BCCI. While new authority and expanded procedures cannot guarantee that criminal activity by foreign banks will not occur, they do address the potential for illegal activities by (1) creating a bar to U.S. entry or operation in the United States by weakly capitalized, poorly managed or inadequately supervised foreign banking organizations, and (2) strengthening the Federal Reserve's capabilities to uncover illicit activity at foreign banks.

CONCLUSION

The Federal Reserve is actively engaged in dealing with the BCCI matter and has deployed its most experienced and proven staff to the task. The Federal Reserve will continue to cooperate with federal, state, and foreign bank supervisors and law enforcement agencies. Our immediate goals are to conclude our investigation and initiate whatever additional enforcement actions are warranted; to make the current separation in fact between BCCI and U.S. banks a complete and permanent separation in law, so that these banks can be relieved of any remaining BCCI taint and operate free and clear of this controversy; and to ensure that all wrongdoers are prosecuted civilly and criminally to the extent provided by law.

Senator KERRY. How far along is the Federal Reserve in its investigation now? Do you think you have uncovered the full truth about what happened and who defrauded the Fed?

Mr. MATTINGLY. Absolutely not. As you know, we have brought a number of civil penalty actions and we have taken steps to remove 9 or 10 people from U.S. banking, but the investigation is still active and our people over the last—well, since the last time we were here, our people have been all over the United States and to a number of foreign countries trying to get the bottom of this thing and we have—we still have a number of people that we need to talk to. These people are located in Abu Dhabi. We have requested the principal shareholders from Abu Dhabi for access to those people.

Senator KERRY. When did you make those requests?

Mr. MATTINGLY. The requests have been outstanding since the middle of last year.

Senator KERRY. How many times have you made those requests?

Mr. MATTINGLY. On a number of occasions.

Senator KERRY. You are talking about making requests to the Government of Abu Dhabi.

Mr. MATTINGLY. These requests were put to the counsel for the principal shareholders of the First American Group, which is the Ruler and Crown Prince of Abu Dhabi and the Abu Dhabi Investment Authority.

Senator KERRY. What's the level of response to date?

Mr. MATTINGLY. We hope that in the near future we will be granted access to a number of individuals that we have asked to talk to.

Senator KERRY. Is that a polite way of saying you still don't have access?

Mr. MATTINGLY. We do not have access to those individuals. We recently—they recently have acted——

Senator KERRY. Is there a reason why you don't have access? Why does it take so long to get access to some people? When did you first ask for access?

Mr. MATTINGLY. I would say in the middle of last year. The Abu Dhabi shareholders have been responsive to the Fed's request in certain areas. As you know, they gave our investigators the access to all of these documents in Abu Dhabi which form the basis for a number of our actions.

Senator KERRY. That has been helpful.

Mr. MATTINGLY. That has been very helpful. They have within the last several weeks—there were a number of documents identified at that time that were privileged, attorney-client communications and things of that nature that were not given to the Federal Reserve.

Within the last 2 weeks, those documents have been transferred from Abu Dhabi to the liquidators in London—the liquidators for BCCI in London, and we have a request pending with them for those documents and we hope to have those documents shortly.

Senator KERRY. When you say we hope to have them shortly, what is that now dependent on? Is that dependent upon simply delivery or is that dependent on reaching an agreement?

Mr. MATTINGLY. We plan to issue an order that would get those documents for us.

Senator KERRY. With respect to officials you said you would like to talk to, I take it you're referring to Messrs. Naqvi and Iqbal and so forth who are under house arrest in Abu Dhabi, is that correct?

Mr. MATTINGLY. That is correct.

Senator KERRY. There are currently about 30 officials, slightly more, who are BCCI officials who are under house arrest in Abu Dhabi.

Mr. MATTINGLY. That is my understanding.

Senator KERRY. Have any of them been spoken to by the Federal Reserve?

Mr. MATTINGLY. Not by our investigators, no, sir.

Senator KERRY. Does that suggest they have been spoken to by someone else?

Mr. MATTINGLY. Mr. Iqbal, who was the chief—acting chief executive officer of BCCI before it closed, our people did talk to him when he was in London, but since this closure we have not been able to talk to him.

Senator KERRY. In terms of those people under the jurisdiction of Abu Dhabi, in their custody, you have not had a chance to talk to anybody.

Mr. MATTINGLY. No, we have not talked to Naqvi and Mr. Darwaish.

Senator KERRY. We will be hearing later from a representative from Abu Dhabi, and in fairness I want to wait, because I anticipate they will suggest that we can talk to people. The ambassador met with me the other day and indicated that this will be forthcoming. But the record is that to date that has not occurred.

Mr. MATTINGLY. In that regard, though, over the last several weeks we have been given—the Federal Reserve has been given indications that we will be able to talk to some of those individuals, and as I indicated certain documents that we have been trying to get for many months have recently been delivered to London by the Abu Dhabi shareholders.

Senator KERRY. Recently being?

Mr. MATTINGLY. The last 2 weeks. I think it was last week, as a matter of fact.

Senator KERRY. Maybe we should schedule these hearings more often.

Mr. MATTINGLY. They have been helpful.

Senator KERRY. Have you been able to reach any judgment as to the victimization issue, as to who are the victims here and who may be perpetrators, or is that premature?

Mr. MATTINGLY. I think that is a little premature. We do know there are victims in the United States. You've identified one. The Independence Bank is a victim. We think the First American Banks have been a victim as a result of this unwarranted association with BCCI. We think that the banking agencies have been victims because we were defrauded by this, and the list goes on.

Senator KERRY. Is there any evidence that Abu Dhabi knew about BCCI's criminal activity prior to BCCI's closure?

Mr. MATTINGLY. Yes, I think that they were aware. I have seen indications from documents that people in Abu Dhabi were aware of the fraud before the July 5 closure.

Senator KERRY. Do you know as of what date?

Mr. MATTINGLY. It would have been late 1990, early 1991, so it was late in the game.

Senator KERRY. Have you found instances where members of the Abu Dhabi royal family confirmed transactions which later proved to be falsified or untrue?

Mr. MATTINGLY. No, I have not.

Senator KERRY. So you have no sense yet of what degree the family may have been victimized themselves by the breadth of this fraud.

Mr. MATTINGLY. That is correct. I have seen information and reports that they've lost millions or billions of dollars as a result of the fraud. I have no direct information.

Senator KERRY. You simply don't have enough information available at this point, I take it, to make any conclusions or judgments with respect to the question of whether anybody within Abu Dhabi and the banking structure or within the BCCI structure shared in the fraud at this point, shared in perpetrating it.

Mr. MATTINGLY. Not when you reference the principal shareholders, no.

Senator KERRY. Now, with respect to the plea agreement that was signed between all of the regulators, BCCI, the District Attorney's Office in New York, and Justice Department, are you satisfied that the obligations to provide information to testify and to get others to help to testify are all being lived up to?

Mr. MATTINGLY. As far as we're concerned the liquidators—the agreement is with the liquidators for the BCCI organization and they have waived the attorney-client privilege which has allowed those documents that I referred to earlier to be released to London, and we would anticipate that they would continue to cooperate with our investigation. They are obligated to do so.

Senator KERRY. Have you received the full cooperation of Touche Ross International Liquidators?

Mr. MATTINGLY. They have been—as I say, they have been cooperative in waiving the attorney-client privilege on these documents.

Senator KERRY. Full cooperation is what I said.

Mr. MATTINGLY. Yes. They have given us the full cooperation.

Senator KERRY. Have you found it difficult to get that cooperation?

Mr. MATTINGLY. Let me put it this way: their cooperation sometimes has been slow in coming. I will put it that way.

Senator KERRY. Slow for logistical reasons.

Mr. MATTINGLY. It was probably for logistical reasons. They have to report to three separate courts. There are a number of countries. There are a number of different statutes that they have to comply with.

Senator KERRY. Have any documents you've requested been withheld?

Mr. MATTINGLY. None other than the documents that are currently in London and we have an outstanding request for.

Senator KERRY. So it is your understanding that those documents will be forthcoming and that this is not an issue of concern.

Mr. MATTINGLY. At this point, it is not. I anticipate getting—the Federal Reserve anticipates getting those documents.

Senator KERRY. Has this slowness in any way impeded your ability for oversight and regulatory exercise responsibilities?

Mr. MATTINGLY. Not seriously, no. We wish that we had gotten documents a little sooner, we wish we had been able to talk to people a little sooner, but it is—as you pointed out, this matter is a complex matter, and some of these things just take time.

Senator KERRY. Has the fund that was established within the Justice Department for their administration as part of the plea agreement, have you received reports on the size and status of that fund?

Mr. MATTINGLY. I am aware generally of the estimated size, which is over \$500 million. I don't know how much they have collected, or the status of that. I'm sorry.

Senator KERRY. You don't know the nature of the assets received that have been seized?

Mr. MATTINGLY. Many of the assets that were covered by that forfeiture were cash accounts at various banks in New York. They were actual cash, cash deposits.

Senator KERRY. You were supposed to be reimbursed, you being the Fed, for the cost under the plea agreement with BCCI. Has that happened?

Mr. MATTINGLY. We haven't made a request yet. Our investigation is continuing, and when it has continued we will sum it all up.

Senator KERRY. Are you receiving the anticipated support and cooperation from the Serious Fraud Office in Britain?

Mr. MATTINGLY. The Justice Department—I think you would have to ask that of the Justice Department.

Senator KERRY. What about governmental entities such as the Grand Caymans and Luxembourg?

Mr. MATTINGLY. You would have to ask the Justice Department there. We continue to have—other than the Bank of England, which has been quite cooperative in getting the Federal Reserve the documents and information that the Fed needs, we have had difficulty with other governmental entities in getting necessary documents—we, the Federal Reserve.

Senator KERRY. Are bank secrecy laws hindering your capacity to get information you are seeking?

Mr. MATTINGLY. Absolutely.

Senator KERRY. They are?

Mr. MATTINGLY. Absolutely.

Senator KERRY. In which countries are those continuing to be the biggest problem?

Mr. MATTINGLY. Luxembourg, France.

Senator KERRY. Has the CIA provided information to the Federal Reserve since 1981 regarding BCCI?

Mr. MATTINGLY. Since 1981?

Senator KERRY. Yes.

Mr. MATTINGLY. After the Federal Reserve's investigation commenced in 1991, the formal investigation, we received information from the CIA, but as you know the information that the CIA had

about BCCI was not communicated to the Federal Reserve prior to last year.

Senator KERRY. Are you receiving adequate cooperation in terms of getting the information from the Justice Department that your investigators need?

Mr. MATTINGLY. Yes.

Senator KERRY. And from the New York District Attorney?

Mr. MATTINGLY. Absolutely. We've established excellent cooperative working relationships with both Mr. Morgenthau's office and the Justice Department.

Senator KERRY. What is the level of cooperation from Kamal Adham?

Mr. MATTINGLY. I will say Kamal Adham has voted his shares, or the shares that he's the record owner of, in support of our trust proposal for First American. Our investigators have talked to Kamal Adham and plan to continue that process in the future.

Senator KERRY. Does that—I mean, I can interpret that a lot of different ways. In terms of cooperation, are you satisfied or not?

Mr. MATTINGLY. We're not satisfied.

Senator KERRY. You're not satisfied.

Mr. MATTINGLY. No.

Senator KERRY. What about from Abdul Raouf Khalil?

Mr. MATTINGLY. Khalil? We have not yet talked to him. We would like very much to talk to him.

Senator KERRY. Ghaith Pharaon?

Mr. MATTINGLY. We would very much like to talk to Mr. Pharaon.

Senator KERRY. And Faisal Al-Fulaij?

Mr. MATTINGLY. We would very much like to talk to Mr. Fulaij.

Senator KERRY. And Mr. Hammoud?

Mr. MATTINGLY. Absolutely.

Senator KERRY. As of yet, none of the above?

Mr. MATTINGLY. None of those people, no.

Senator KERRY. Have you yet determined whether or not BCCI and First American shareholder and front man Mr. Hammoud is actually dead?

Mr. MATTINGLY. We were acting on the assumption that Mr. Hammoud is dead. The communications that we have had have been with his son. We have been advised he is deceased.

Senator KERRY. Have you conducted a further investigation into that?

Mr. MATTINGLY. No, we have not.

Senator KERRY. Do you think that might be advisable, given the evidence to the contrary?

Mr. MATTINGLY. Well, the status of our charges, we do not have charges pending against Mr. Hammoud. He is one of the shareholders that—

Senator KERRY. He would be a very interesting witness, don't you think?

Mr. MATTINGLY. Yes, he would.

Senator KERRY. Alive or dead.

Mr. MATTINGLY. We would like to talk to him, that is for certain.

Senator KERRY. Are there still BCCI documents in the United States that you do not yet have within your possession that you're aware of and that you're seeking?

Mr. MATTINGLY. No. I think we received everything that we could lay our hands on in the United States.

Senator KERRY. Have you reviewed the BCCI documents at the former Los Angeles agency of BCCI?

Mr. MATTINGLY. I think one of our investigators and some of our examiners have gone through that material. I don't know whether that review is complete.

Senator KERRY. But you do have that.

Mr. MATTINGLY. We do have that information.

Senator KERRY. And from the Chicago representative office.

Mr. MATTINGLY. I'm not aware of that. We have the Florida stuff, the information.

Senator KERRY. Do you know where the Chicago documents are located? It is our information you have only a handful of the Chicago documents. Is that accurate?

Mr. MATTINGLY. I would have to check with the investigators.

Senator KERRY. Mr. Stone, with respect to the Independence Bank, that was closed down on January 30 of this year, correct?

**TESTIMONY OF JOHN W. STONE, CHIEF OF ENFORCEMENT,
FEDERAL DEPOSIT INSURANCE CORPORATION**

Mr. STONE. Correct.

Senator KERRY. What percentage of the loans did the examiners find were subject to adverse classification?

Mr. STONE. If I recall, the highest level we had was 23 percent of assets. At the latest exam, about 30 percent of the total.

Senator KERRY. I had understood, according to a confidential FDIC report, that they totalled nearly \$200 million which represented almost 44 percent of all the losses. Is that accurate, 44 percent of all the total loans?

Mr. STONE. 44 percent of total loans. The earlier figure I gave you was of total assets.

Senator KERRY. That has been described by examiners as a phenomenal ratio for a commercial bank. Is that accurate?

Mr. STONE. That is. If I may add, the loss, estimated at this time between \$130 and \$140 million, is somewhat typical based upon total assets. But the total loan portfolio, that is correct, it is a very high loss.

Senator KERRY. Now, clearly, a bank does not accumulate a loan portfolio like that overnight.

Mr. STONE. No.

Senator KERRY. So how did the bank stay open so long?

Mr. STONE. The first indications that we had, following the acquisition by Dr. Pharaon, of speculative joint venture activity was as far back as 1988. We brought it to his attention and actually took informal enforcement actions. He would take out some of the joint venture credits, the more speculative, at book value, while we know they have losses. He put in \$28 million more in equity. We even got to a formal enforcement action. We prohibited, by agreement, further type lending of that category in joint ventures.

They went from joint ventures, however, to straight real estate loans that did not have the underwriting standards that we would have expected and, with the downturn in the economy, came home to roost, primarily after 1990—through 1991.

Senator KERRY. Did lack of onsite inspections contribute in any way to that capacity?

Mr. STONE. No. You always feel more comfortable if you can go in more often. But after we shutoff the joint venture lending and thought we were getting them to adopt adequate loan standards, and shut off new credits, the old credits that were already embedded were the ones that caused the loss.

Senator KERRY. We need to recess for about 10 minutes because we are on the back end of a vote here. As soon as I get back from the vote we will resume. We stand in recess for about 10 minutes.

[A brief recess was taken.]

Senator KERRY. The hearing will come back to order. Thank you for your patience. I apologize.

Mr. Stone, I was asking you about the Independence Bank and we had talked briefly about the level of loan classification, the failure, et cetera. I gather that the examiners observed financial statements that were often not complete, sometimes not even signed by the borrower, often not representing the legal entity that was borrowing the funds and frequently not even on the forms of the bank, which listed pertinent questions which, I take it, were unanswered. Is that accurate, that there were these incredible irregularities in the borrowing practice and documentation?

Mr. STONE. Yes. It's been a while since I recall the exact report, but that is a true statement, that file documentation was horrible.

Senator KERRY. Would it be fair, then, to say that the Independence Bank essentially adopted the same kinds of banking standards and practices as its owner BCCI?

Mr. STONE. Mr. Chairman, with due respect, my familiarity with BCCI as an entity would not qualify me to answer that.

Senator KERRY. That is fair enough. Is it also true that this bank had an unenviable record of selecting or attracting borrowers of particularly low creditworthiness, or of questionable character?

Mr. STONE. I will ask behind me on character, but they did have a track record of involving themselves, previously, with joint ventures that were ill conceived, or dealing with developers that may have been successful in smaller projects but were getting in much bigger projects than they had experience in. And as far as the character, the character also was questionable in some instances, yes.

Senator KERRY. Have you concluded that the officials at the Independence Bank misled bank examiners as to the problems at the bank?

Mr. STONE. No. The principal officials, Mr. Dobrich and Mr. Michaels, while they may not have agreed with us I don't believe that our problem was one of misrepresentation. In fact, I don't think they challenged our classifications that much. In previous exams loans were taken out and more capital put in.

Obviously though, Mr. Chairman, when you have repeats of loans being taken out, more capital being put in, yet still making some of the same mistakes, it raises all kinds of questions in any examiners mind.

Senator KERRY. Well I thought you folks had drawn a blunter assessment than that. I mean the report itself says, quote: outright misrepresentation by bank officials during previous examination.

Mr. STONE. On Mr. Shoaib, yes, we did feel he had misrepresented the situation.

Senator KERRY. So you are suggesting only as to one official.

Mr. STONE. Principally Mr. Shoaib, yes.

Senator KERRY. And is it accurate, then, that the current cost to the American taxpayer of BCCI, because of its ownership of Independence, is the \$130 to \$140 million indirect?

Mr. STONE. Our best estimate of the cost to our fund—which I do not know that we can say yet will be the American taxpayer and hopefully not because—

Senator KERRY. You hope to recover some through what, through the plea agreement itself?

Mr. STONE. We look to the plea agreement. We look also—we are continuing our investigations as far as suits against directors.

Senator KERRY. But as of this moment, you have got a \$130 to \$140 million debit with no countervailing assets. Is that accurate?

Mr. STONE. Other than our priority claim, if you will, against the fund of the plea agreement, that is correct.

Senator KERRY. Now under the plea agreement, on December 27, 1991, \$5 million went to Independence Bank from BCCI.

Mr. STONE. \$5 million was received, I believe, before.

Senator KERRY. Well 1 month later the bank failed.

Mr. STONE. Right.

Senator KERRY. What happened to the \$5 million?

Mr. STONE. That \$5 million went directly to the capital accounts of the Independence Bank in December. But based on our examination in January it was wiped out, if you will, by additional losses. It was insufficient to keep the bank solvent.

Senator KERRY. Do you know specifically—or can you say more specifically where it went?

Mr. STONE. Well let me explain. It would be credited to the capital accounts, \$5 million of cash. But because of subsequent loan losses that are charged against capital, noncash charges but losses.

Senator KERRY. So it simply went out against loan losses?

Mr. STONE. Correct.

Senator KERRY. Who were the auditors for the Independence Bank?

Mr. STONE. Pardon me. I will get that information for you. I just don't have it.

Senator KERRY. Do you know, without knowing who the audits were by, whether or not the audits through the years accurately reflected the condition of the institution? I take it that it would be possible for them to have done so.

Mr. STONE. We may have pending litigation in that matter as a part of our investigation, but that would definitely be something.

Senator KERRY. Well I would like to leave the record open and have you answer, if you will, subsequently a series of questions with respect to the auditor process. That would be helpful.

[The prepared statement of Mr. Stone follows:]

PREPARED STATEMENT OF JOHN W. STONE

Mr. Chairman, members of the Subcommittee, we appreciate this opportunity to testify regarding the role of the Federal Deposit Insurance Corporation in the supervision and resolution of the Independence Bank, Encino, California, and related matters. In general, my testimony will review the supervisory history and resolution of the Independence Bank and during the course of that review, address the issues raised in your letter of invitation.

EARLY HISTORY OF INDEPENDENCE BANK

Independence Bank of Encino, California, opened in 1963, and was a state chartered nonmember bank regulated by the California State Superintendent of Banks and the FDIC. In 1980, the bank was acquired by Halifax Bancorp. Operations generally were satisfactory until an FDIC examination in January 1984 disclosed numerous problems which were brought to the attention of bank management and were largely corrected.

ACQUISITION BY DR. GHAITH R. PHARAON

On June 10, 1985, Dr. Ghaith R. Pharaon filed a Notice of Acquisition of Control with the FDIC for 100 percent ownership of Independence Bank's outstanding shares. Documents provided at the time indicated that Dr. Pharaon's acquisition purportedly would be funded by approximately 40 percent from Dr. Pharaon's own funds and 60 percent from a loan from a major domestic bank. Dr. Pharaon submitted financial information with the Notice, showing net worth of \$498 million. Dr. Pharaon's financial assets appeared to support the acquisition.

Our records indicate that a routine background check of Dr. Pharaon was conducted in 1985, including a request for comment from the Federal Bureau of Investigation, the Customs Service, the Central Intelligence Agency, the International Criminal Police Organization (INTERPOL), and other bank regulatory agencies. Dr. Pharaon, a Saudi Arabian national, was known to other bank regulators from transactions involving Bank of the Commonwealth, in Detroit, Michigan, and National Bank of Georgia, in Atlanta, Georgia. No adverse information about Dr. Pharaon was uncovered by the background checks.

The FDIC advised Dr. Pharaon in a letter to his counsel dated September 12, 1985, that the FDIC would not disapprove the acquisition. The FDIC's letter stated that "the authorization to proceed with the acquisition is based on the specific information contained in the Notice [of Acquisition of Control]," and that an acquisition which was inconsistent with the information provided would be a violation of the Change in Bank Control Act which could result in civil and criminal penalties. On October 1, 1985, Dr. Pharaon acquired control of all the voting shares of Independence Bank.

HISTORY OF MANAGEMENT AND REGULATORY ACTIONS TAKEN FOLLOWING ACQUISITION

Immediately following acquisition, Dr. Pharaon named Kemal Shoaib as Chairman of Independence Bank and, eventually, as Chief Executive Officer as well. Mr. Shoaib had served as General Manager of BCCI, S.A., in London. Morton Michaels, who had been Independence Bank's President and Chief Executive Officer prior to the acquisition, remained as chief operating officer. Prior to his position at Independence Bank, Mr. Michaels had been the California Superintendent of Banks.

Following acquisition of the bank by Dr. Pharaon, the condition of the bank was monitored regularly by state and FDIC examiners. From 1985-88, the State banking department conducted examinations and gave Independence Bank a composite 2 rating, 1 being the highest rating out of 5. The FDIC did not conduct onsite examinations but confirmed the rating through offsite monitoring and onsite visitations. From 1985 through mid-1988, Independence Bank's condition was viewed by the examiners as satisfactory.

In mid-1988, however, the FDIC downgraded the bank to a 3 rating based on rapid growth and changing asset mix detected in an offsite review. A subsequent onsite FDIC examination conducted concurrently with the State banking department beginning in September 1988, downgraded the bank to a composite 4 rating.

This examination in 1988 marked the turning point for Independence Bank. From 1988, FDIC examiners became increasingly concerned and alerted to problems at the bank. The examination report disclosed heavy asset classifications, low capital, weak earnings, thin liquidity, poor underwriting policies and inadequate record keeping and internal controls. Growth had been uncontrolled since mid-1987 and had been

concentrated in joint venture real estate investments permitted under California law.

Mr. Shoaib had embarked on a program of investing in joint ventures involving acquisition, development and construction of real estate projects, primarily in southern California. In 1988, FDIC examiners discovered improper accounting of these projects which resulted in the understatement of total assets and liabilities, and the overstatement of the bank's capital. Dramatic deterioration in these projects was a primary factor in adversely classified assets growing to nearly 23 percent of total assets at the time of the FDIC's 1988 examination. Real estate loans and joint venture investments comprised 88 percent of classified assets.

Over the course of several months, FDIC supervisors met with the bank's officers and directors to outline the bank's problems and to present a corrective program. Dr. Pharaon proposed the infusion of \$10 million in capital and stated his intention to address the bank's involvement in nontraditional activities. In January 1989, Mr. Shoaib resigned. The classified joint venture investments were reduced by about two-thirds through sales at book value for cash to companies related to Dr. Pharaon. A 14-point Memorandum of Understanding was issued which required the retention of qualified management, achievement of a 7 percent capital ratio, improvement of asset quality, extensive loan policy revisions and formalization of the halt in direct real estate investments which the bank had agreed to previously. The real estate investment provision provided that the investments would cease until bank regulators determined that the bank's condition was satisfactory. In June 1989, Fulvio Dobrich joined the bank as Chairman and Chief Executive Officer. Mr. Dobrich's prior experience was gained in the Middle East and Balkan countries with several banks, including Manufacturers Hanover Trust Company.

The FDIC examined Independence Bank again beginning in August 1989 and again assigned the bank a composite 4 rating. The examination disclosed continued asset growth and deterioration of joint venture investments, but the total volume of problem assets was lower than in 1988. A new Memorandum of Understanding was issued. During 1989, \$10 million in new equity was injected into Independence Bank. The capital was ostensibly injected by Dr. Pharaon. He also provided a written unconditional commitment to the FDIC to maintain a 7 percent capital ratio.

By the August 1990 FDIC examination, conducted concurrently with the State examiners, total problem assets again increased. Joint ventures remained a problem, although smaller than in the past, but a general deterioration in the Southern California real estate market caused additional real estate loans to sour. The lack of material improvement in overall asset quality resulted in a cease-and-desist action after the 1990 examination. In response to criticism, several problem joint venture investments were removed from the bank's books and \$7.6 million in new equity was injected into the bank. Again, ostensibly this was done by Dr. Pharaon personally.

Throughout the period 1988-90, Dr. Pharaon made efforts to address identified weaknesses in the bank's asset portfolio and provided additional capital. In sum, between 1987 and 1990, total capital of nearly \$28 million was injected, purportedly by Dr. Pharaon. In a letter dated April 23, 1991, Dr. Pharaon retracted his previous commitment to maintain adequate capital by stating that he would no longer provide capital for Independence Bank. In July, the California Department of Banking issued a Capital Impairment Order which required the injection of \$27 million by September 16, 1991. Meanwhile, media reports raising suspicions of BCCI involvement in Independence Bank began appearing and, in July 1991, the Federal Reserve Board initiated proceedings against Dr. Pharaon with respect to the illegal acquisition of Independence Bank. Beginning in July of 1991, the FDIC placed a full time examiner in Independence Bank to monitor the condition of the bank, to investigate any controlling ties between BCCI and the bank, and to determine the effect of that control, if any, on the bank.

In an effort to meet the State's capital demand, Independence Bank Chairman Dobrich investigated numerous possibilities. The California Department of Banking extended its Capital Impairment Order deadline on several occasions in light of the possibility of raising additional capital directly from the Royal Family of Abu Dhabi, through a settlement of U.S. claims against BCCI, or a sale of the bank. The bank's assets, particularly its real estate loans, continued to deteriorate, creating uncertainty as to how much equity was needed to assure the continued existence of the bank. In addition, the publicity surrounding BCCI's involvement had a major negative impact on Independence Bank's deposit base.

On December 27, 1991, an advance payment of \$5 million was injected into the bank by the BCCI liquidator with the understanding that the amount would be credited towards any final settlement with U.S. authorities.

Nevertheless, in mid-January 1992, it became evident that the loan loss provision necessary to compensate for asset value declines would eliminate remaining equity, including the \$5 million addition made in December 1991. Consequently, the California Superintendent of Banks closed Independence Bank on January 30, 1992, and the FDIC was appointed receiver.

The FDIC Board of Directors determined that a payoff of depositors was the least costly resolution. No acceptable bids were received. Certain insider accounts were frozen and are under investigation. All other deposit accounts, including those with amounts exceeding the Federal insurance limit, were transferred to First Interstate Bank, which served as the FDIC's paying agent, and funds were made available to depositors the day after the closing. The FDIC Board acted to protect all depositors of Independence Bank because the Corporation expects to be reimbursed for the full cost of the resolution out of the special fund established from BCCI's U.S. assets.

BCCI'S INVOLVEMENT IN INDEPENDENCE BANK BECOMES KNOWN

The Notice of Acquisition of Control filed with the FDIC by Ghaith Pharaon in 1985 clearly indicated that he was to be the 100 percent owner of Independence Bank. At the time of the acquisition, BCCI acted as an investment advisor to Dr. Pharaon. From 1985 until 1991, the FDIC had no reason to believe that anyone other than Dr. Pharaon was the 100 percent owner of the bank. No documents were noted during examinations of Independence Bank prior to 1991 which revealed the existence of BCCI's hidden ownership in the bank.

The FDIC was aware of Dr. Pharaon's reported 15 percent ownership stake in BCCI and his borrowing relationship with BCCI. Likewise, it was known that Independence Bank's Chairman, Kemal Shoaib, was a former officer of BCCI, but his hiring at Independence Bank was explained as arising from Dr. Pharaon's familiarity with Mr. Shoaib from his banking relationship at BCCI. These connections did not lead us to suspect at that time that BCCI owned or control led Independence Bank at the time of Dr. Pharaon's acquisition.

In 1988, after BCCI was indicted on money laundering charges, an FDIC examiner of Independence Bank recalled that Mr. Shoaib had joined Independence Bank directly from BCCI. Because of this connection, the examiner suggested that an investigation of possible money laundering be undertaken at Independence Bank. Subsequently, an extensive compliance examination was conducted which concluded that Independence Bank employees were not directly involved in money laundering activity and that the bank was in substantial compliance with regulations requiring the filing of Currency Transaction Reports (CTRs). However, one of the examiners noted several suspicious customer transactions, which were the subject of CTRs filed by Independence Bank as required by law. These transactions were brought to the attention of the FBI.

Widespread public suspicions of possible BCCI involvement in Independence Bank surfaced in 1991 as newspaper stories appeared regarding the activities and ownership interests of BCCI. Beginning early in 1991, FDIC examiners visited Independence Bank in an attempt to determine the extent of any relationship with BCCI and/or any other related entity. FDIC examiners were unable to uncover any evidence that BCCI owned or control led Independence Bank.

On July 5, 1991, bank regulators worldwide seized BCCI's operations. On July 12, 1991, the Federal Reserve Board initiated enforcement proceedings against four individuals, including Dr. Pharaon and Mr. Shoaib, for their involvement with the illegal acquisition of Independence Bank. Criminal charges also were brought by the District Attorney for the County of New York and the U.S. Department of Justice. These charges alleged that, among a number of other illegal actions, BCCI had secretly acquired 85 percent ownership and control of Independence Bank in 1985 through its nominal shareholder of record, Dr. Pharaon.

In the fall of 1991, an internal investigation initiated by bank management uncovered Mr. Shoaib's personal correspondence file, of which current bank management professed to be unaware. A copy of a handwritten letter found in the file, from Dr. Pharaon to Swaleh Naqvi, a highly placed BCCI official, dated June 25, 1986, alluded to a "15/85 arrangement," without elaboration. The fact that a copy of that letter was found in Mr. Shoaib's files would indicate that he at least was aware of the ownership arrangement. Mr. Dobrich, Independence Bank's CEO at the time of the discovery of the letter, denied any prior knowledge that the bank was owned by anyone other than Dr. Pharaon. Mr. Shoaib's whereabouts were unknown.

During the fall of 1991, BCCI was being addressed by banking authorities worldwide. On December 19, 1991, BCCI's foreign liquidators entered into a plea agreement with the Department of Justice and the District Attorney for New York County under which BCCI would enter guilty pleas to federal and state criminal

charges, including charges of racketeering. Several federal and state regulatory agencies, including the FDIC, also are parties to the agreement. The United States District Court for the District of Columbia accepted the agreement on January 24, 1992. FDIC investigators are continuing review of Independence Bank's records.

DIRECT TRANSACTIONS WITH BCCI

In one case, BCCI made an \$8 million loan to a joint venture interest of Independence Bank, \$7 million of which was wired to the bank and was remitted to Columbia Savings and Loan which was threatening to foreclose on its loan to the joint venture. The remaining \$1 million was to be a fee for BCCI but was never paid. Independence Bank subsequently sold its interest in the joint venture to a Pharaon-controlled company at no known loss.

In another instance, Independence Bank subordinated its first lien position on a loan to a developer to BCCI's Los Angeles agency, for reasons which are not clear from the bank's files. At the final examination, no one involved in that decision was still employed by the bank to shed any light on the decision. Loans by Independence Bank to the developer for \$2.7 million were classified "Loss" in the final report of examination, as a result of that subordination.

JOINT VENTURES

Direct real estate investment powers given to California state chartered banks provided an opportunity for substantial profits from the rapidly escalating real estate values of the mid to late 1980s. Joint venture investments made by Independence Bank after Dr. Pharaon's acquisition, however, caused significant problems at the bank. The majority of these problem investments were sold by 1991, largely in response to the FDIC's demands.

Mr. Shoaib had control of the bank's equity investments in real estate joint ventures, including selecting the partners and the projects, and overseeing records, but there is no known documentation tying any of the joint venture partners directly to BCCI or known BCCI-related individuals. Most permanent financing for these real estate ventures was to be provided by well known unrelated financial institutions. However, in two or three cases, companies believed to be related to Dr. Pharaon were to provide take-out financing of completed projects.

Although a few joint venture projects were profitable, on an overall basis the bank faced severe potential losses on the ventures. Some of the projects were exceptionally ill-conceived, poorly controlled and involved partners not qualified to undertake projects of this magnitude.

In response to the FDIC's criticism, a substantial portion of the joint venture projects were sold to or assumed by companies in which Dr. Pharaon had an interest, thereby averting losses to the bank. For example, Independence Bank was facing a \$5 to \$10 million loss on the City Center Atlantic Group projects when Pharaon-related companies bought out the bank's interest in several of the projects at book value in 1990. These sales eliminated the need for the bank to recognize loss on these projects.

Even though Dr. Pharaon's companies purchased many of the distressed ventures, thereby preventing losses to Independence Bank, losses were taken on some projects. The bank suffered substantial losses (at least \$5 million) on joint ventures during 1989 and 1990. During 1991, an additional \$9.7 million loss was booked on these joint ventures.

In mid-1991, bank management undertook an investigation of Mr. Shoaib's personal involvement in joint venture investments. The bank filed a number of Reports of Apparent Criminal Irregularity (criminal referrals) with the FDIC, the FBI, and the local U.S. Attorney's office, beginning in August of 1991 because of the strong possibility that Mr. Shoaib and some joint venture partners derived substantial personal benefit from fraudulent actions in connection with the transactions. The alleged violations all involved past actions by individuals who were no longer employed at the bank, and, for the most part, assets that were no longer owned by the bank. The FDIC onsite examiner cooperated closely with the FBI, helped identify and secure records, and provided technical assistance.

LOANS MADE TO BCCI-RELATED ENTITIES OR AT BCCI'S DIRECTION

To date, the FDIC has uncovered no bank records from our reviews that BCCI ever instructed the Independence Bank to make loans to anyone. It is possible that some loan officers may have been in contact directly with BCCI (or indirectly through Mr. Shoaib).

At various times Independence Bank made loans to companies believed or known to be controlled by Dr. Pharaon. All were paid off prior to the final examination without known loss to the bank. A loan to an interest of Berge Setrakian, Pharaon's attorney, was classified "Substandard" at the last FDIC examination in November of 1991. A review of larger loans has indicated no other loans to known BCCI-related individuals or their interests.

The bank's records indicate that Dr. Pharaon referred at least one sizable borrower to the bank and that loan was classified "Substandard" at the final examination. However, there is no apparent connection between the borrower and BCCI. The bank's files would not note that information, if it was intended to be hidden from the regulators. Following the bank's closing, one additional loan was discovered which had been referred to the bank by Dr. Pharaon's attorney. It is too early to determine the extent to which the loans referred to above will be collected, although the prospects for collection in full appear reasonably good.

Since it appears that BCCI owned Independence Bank secretly since 1985, referrals of BCCI customers, their relatives, business associates, and friends in Southern California to Independence Bank would not be an unexpected or unusual practice. Careful scrutiny of the circumstances of any questionable transactions is being conducted by the FDIC.

OTHER TRANSACTIONS

A number of deposit relationships existed with persons or entities known to be connected to Dr. Pharaon or BCCI. With one significant exception, nothing unusual was noted in a review of these accounts. From 1986 through 1988, there are unexplained deposits directly from BCCI to the personal account of Mr. Shoaib, totaling almost \$1 million from unspecified sources through a Swiss bank.

In 1990, Independence Bank engaged in certain transactions involving swapping and restructuring of Less Developed Country (LDC) debt through a company partially owned by Mr. Dobrich. The company was initially financed by Dr. Pharaon who held an 80 percent ownership stake at its formation. Independence Bank earned more than \$4 million in fees in 1990 on the transactions. During the FDIC's 1990 examination, the FDIC criticized the transactions as inappropriate for Independence Bank and the transactions appear to have ceased immediately. None appeared on the books of the bank when it was closed. We have no evidence at this time of involvement of BCCI or any BCCI affiliate in these transactions.

With regard to relationships or transactions between the bank and First American Bank or National Bank of Georgia, we know of no loans or other assets that Independence Bank purchased from or sold to the two banks. We know of no common directors or officers and are not aware of any customers being referred from the one bank to another.

Independence Bank maintained a correspondent relationship (a deposit account) with First American Bank from the late 1980s until it was closed in early 1991. No unusual transactions were noted in that account from the time of the 1990 examination until the account was closed. We are not aware of any type of correspondent relationship with National Bank of Georgia. Independence Bank also had a committed line of credit (to meet potential liquidity needs) from First American Bank from the late 1980s until it was canceled by First American in early 1991; we do not believe the line was ever drawn on.

In summary, we are not aware of any significant, unusual, or suspicious intercompany transactions between Independence Bank and the other two banks.

IMPACT OF BCCI'S OWNERSHIP ON THE BANK'S PRACTICES AND ULTIMATE CLOSURE

It appears that BCCI sought profits from the then fast growing Southern California economy and rising real estate values. BCCI may have been content to allow Mr. Shoaib and Mr. Michaels to run the bank as long as profits were increasing. Apparently, to obtain those profits, Mr. Shoaib and Mr. Michaels directed the bank's rapid growth and took inordinate risks, including extensive use of the direct real estate investment powers permitted to state-chartered banks in California which, for a time, enabled many banks to profit handsomely.

In the end, Independence Bank's ultimate failure was a result of a weak board of directors, self-serving and poor quality senior management which allowed Independence Bank to veer out of control, and the downturn in Southern California's real estate values. Losses resulting directly from known BCCI relationships appear to represent a small part, if any, of the bank's overall losses. The FDIC's investigation, however, is ongoing.

LOSSES AND RECOVERIES

The total amount of losses associated with the closure of the Independence Bank will not be known for a number of years until all the assets retained by the receivership can be liquidated. The FDIC expended approximately \$535 million to payoff the depositors and the receivership holds assets with an estimated value of \$397 million. The best estimate currently available indicates a loss of \$130 to \$140 million after all assets are sold.

A prominent feature of the BCCI plea agreement is the agreed forfeiture by BCCI to the United States of all BCCI property located in the United States, which is ultimately expected to exceed \$500 million. Following the forfeiture and a statutory claims process, the forfeited funds are to be divided between a "U.S. Fund" and a "Worldwide Victims Fund," with the latter ultimately to be made available to the foreign liquidators. The money in the U.S. Fund is to be distributed at the discretion of the Attorney General for several enumerated domestic purposes, the first of which is reimbursement of the Bank Insurance Fund for losses incurred in connection with BCCI controlled banks.

We understand that many claims have been filed with the U.S. District Court laying claim to title to some or all of the money thus far forfeited by BCCI, and that litigating these claims may be a lengthy process. Nevertheless, we anticipate receiving substantial protection from ultimate BCCI related loss through the forfeiture process contained in the 1991 plea agreement.

All efforts are being made by the FDIC to investigate the bases for possible additional claims resulting from the failure of Independence Bank. We also are pursuing the normal sources of recovery in a receivership situation, including the possibility of recoveries from directors and officers and other claims the receivership may have against other third parties.

CONCLUSION

Mr. Chairman, that concludes my prepared testimony. I will be pleased to answer any questions member of the Subcommittee may have. Thank you.

Senator KERRY. In your prepared testimony you refer to the use of a Swiss bank by the bank chairman, former BCCI employee Kemal Shoaib. And he apparently has stowed away more than \$1 million in that Swiss account. Is that accurate?

Mr. STONE. Yes. I don't want to imply that that came out of Independence Bank. We detected, in going through his account—as we would as a normal part of a routine, particularly of a problem bank, of going through officer accounts—some unexplained monies coming into his account in the bank from the Swiss account. Not necessarily out of Independence Bank, but large sums of money.

We had our own speculation as to what that might be, our own feelings, but nothing that we could nail down. We felt that perhaps some of these joint ventures, kick backs, some part—somehow he was enriching himself at the detriment of the bank.

Senator KERRY. Are you currently investigating that?

Mr. STONE. Yes.

Senator KERRY. What is the name of the Swiss bank.

Mr. STONE. I will get that as well for you. Pardon me, Mr. Chairman, let me explain. It is a separate arm of—I am supervision and examination. Once the bank fails, it is a separate division. That is why I don't know it off the top of my head.

Senator KERRY. How long do you expect the investigation of Independence Bank to continue?

Mr. STONE. Generally with institutions of this size, they will continue, unless satisfied earlier, right up to the date of the statute of limitations. Which could even go beyond that, if we feel there are potential claims, by getting tolling agreements and whatever. Obvi-

ously, we are going to spend more time in this situation than we would in an unrelated BCCI matter.

Senator KERRY. Give me an estimate. Do you have a sense of what we could look to for an understanding of the bottom line on the Independence Bank?

Mr. STONE. As far as what our ultimate costs will be?

Senator KERRY. Costs and liabilities.

Mr. STONE. On the cost, we actually won't know that until the date the last asset is sold. We don't dump assets on the market and we don't hold and speculate. But the ultimate figure—in my best estimate in my experience—we won't know for, I would say, 3 years. But we will have a very good estimate. And we update that loss, at a minimum, on an annual basis for our financial statements and have harder information as that goes.

As far as the liability, it is when our professional investigators, claim investigators, feel that they have sufficient evidence to either—

Senator KERRY. So it is really open-ended.

Mr. STONE. It has to be.

Senator KERRY. OK, that is fine. I just want to get a sense of it so we know what we are dealing with.

Let me ask a few questions, if I can, on the BNL investigation. When did the agents at the Federal Reserve seize the documents from the Banca Nazionale del Lavoro in Atlanta?

Mr. MATTINGLY. It was the day that we accompanied the FBI agents that went into the branch. I think that was either July or August of 1989.

Senator KERRY. August 4, 1989.

Mr. MATTINGLY. You are correct.

Senator KERRY. What did those documents show?

Mr. MATTINGLY. Well, the documents that were seized showed that the bank branch in Atlanta was running what they call an off-book operation. In other words, they had loans that were not recorded on their books and they were raising funds through the interbank market that they were not recording on their books.

It was like they were having two separate sets of books. The one set of books that was available to the auditors showed, I think it was \$700 million in assets and a corresponding amount of funding. This off-book operation showed billions of dollars in loans and funding that was not recorded on the books.

Senator KERRY. So in August of 1989 the Federal Reserve has documents that show billions of dollars of an off-book operation, correct?

Mr. MATTINGLY. That's correct.

Senator KERRY. And at the same time it becomes clear, does it not, to the Federal Reserve that high level Iraqi officials are involved in the BNL fraud?

Mr. MATTINGLY. I don't think it was clear at that time. It subsequently—

Senator KERRY. When did that become clear?

Mr. MATTINGLY. I'm not—you're asking something—I haven't gone back and refreshed my recollection, but I think as the investigation went forward, in the ensuing months it became clear there were certain Iraqi.

Senator KERRY. How long before it became clear? Give me a sense of that.

Mr. MATTINGLY. I would say it somewhere—several months, 3 or 4 months.

Senator KERRY. 3 or 4 months or so.

Mr. MATTINGLY. Right.

Senator KERRY. Now last month the New York Times and the Los Angeles Times both reported that the Justice Department asked the Federal Reserve, in both Washington and New York, to delay regulatory action against BNL. Are you familiar with that?

Mr. MATTINGLY. Yes, I am.

Senator KERRY. Did the Justice Department, in fact, intervene with the Federal Reserve concerning BNL?

Mr. MATTINGLY. We—

Senator KERRY. Yes or no, did they?

Mr. MATTINGLY. Oh, yes they did. They asked us to hold up because of concerns about double-jeopardy. And then after they bought their indictments—

Senator KERRY. Concerns about double-jeopardy.

Mr. MATTINGLY. Double-jeopardy. In other words if we took an action—we had an action pending against Lavoro, I think it was \$41 million or something, Reserve deficiency. And they were concerned that if the Fed proceeded with that penalty, it might prejudice the Justice Department in the event they subsequently decided to bring a criminal action.

Senator KERRY. Well what did they say to you about a pending criminal action? Did they say there was one?

Mr. MATTINGLY. No, they said they were looking at it.

Senator KERRY. And this was when, precisely?

Mr. MATTINGLY. Senator, I would say that was in 1990. I would have to—

Senator KERRY. Can you be more specific?

Mr. MATTINGLY. I would have to go back and refresh my—I didn't look at that for this hearing. But it breached the time that the Justice Department actually decided to bring the indictment against the people at the branch. [Pause.]

We think it is mid-1990.

Senator KERRY. About mid-1990? Do you know whether or not they had an indictment that was drawn up concerning BNL at the time they were talking to you?

Mr. MATTINGLY. I think they were considering it. I don't know whether it was—

Senator KERRY. You don't know whether it was drawn up or not?

Mr. MATTINGLY. Actually drawn up, no.

Senator KERRY. Or whether or not they ever presented it to the grand jury?

Mr. MATTINGLY. Well, an indictment was presented to the grand jury against Mr. Dragoul and Vanweedle and other people who were—

Senator KERRY. Right, but not more broadly?

Mr. MATTINGLY. Not again the bank itself, no.

Senator KERRY. Correct. In 1989, did the Federal Reserve argue in a meeting of the National Advisory Council against the continuation of commodity credits to the government of Iraq?

Mr. MATTINGLY. Yes.

Senator KERRY. What was the response?

Mr. MATTINGLY. I believe that the Federal Reserve—the program went forward.

Senator KERRY. Have you found evidence linking BNL to BCCI?

Mr. MATTINGLY. The only evidence that we have found, Senator, is that as part of this gray book operation that I was talking about where BNL, the Atlanta branch was raising money in the inter-bank market, BCCI on a number of occasions was one of the banks that funded them in the overnight market.

Senator KERRY. But that is the only connection?

Mr. MATTINGLY. That is the only connection we have determined to date.

Senator KERRY. With respect to First American, who do you consider to be the owner of First American as of this time?

Mr. MATTINGLY. Our information is that and our belief is that the liquidators for BCCI, that is the estate of the defunct BCCI bank, own approximately 60 percent of the shares of First American.

Senator KERRY. And have you established which shareholders in CCAH were legitimate and which were nominees?

Mr. MATTINGLY. Yes, we think we have.

Senator KERRY. Who is in which category?

Mr. MATTINGLY. Well, many of the people that you named earlier we believe were nominee shareholders.

Senator KERRY. Do you have a list? Can you run down it?

Mr. MATTINGLY. Kamal Adham, we believe——

Senator KERRY. Now you are listing what?

Mr. MATTINGLY. I will list the people that the Federal Reserve has charged as acting as nominees, agents for BCCI, that would be Kamal Adham, the Marzrui holding company, Faisal Fulaij, A.R. Khalil, Sharafa, Jawhary, Adham Corporation, that is owned by Kamal Adham, Hammoud, and Hammoud that is it.

Senator KERRY. That's it. Those are the nominees?

Mr. MATTINGLY. Oh, there are the rulers of this Al Naomi is the ruler of the one of the emirates in the UAE.

Senator KERRY. As a nominee?

Mr. MATTINGLY. As a nominee.

Senator KERRY. The others are all legitimate——

Mr. MATTINGLY. The others shares that we don't have——

Senator KERRY. Is there a group that falls into sort of, we don't know yet, unknown, or are you putting them into one of two categories?

Mr. MATTINGLY. We don't have any information that the following people acted as nominees for BCCI and that would be the ruler of Abu Dhabi, the crown prince of Abu Dhabi and the Abu Dhabi investment authority. And Mr. Clifford and Mr. Altman, our investigation continues on that. That would be the complete list.

Senator KERRY. Now how would the establishment of this trust help to ensure compliance with your order concerning the divestiture of ownership of First American?

Mr. MATTINGLY. It would help because what it is essentially designed to do is to get the bank sold and the stock converted to cash and then these conflicting claims about who owns the bank can be

resolved separately. They can fight over the cash rather than over the stock of the bank.

Senator KERRY. And the trustee of this trust will exercise powers of an owner?

Mr. MATTINGLY. The way this is set up, we have taken—the U.S. holding company, the First American Corporation and 100 percent of its shares, the entire—all of its shares and therefore 100 percent of the shares of the subsidiary banks would—

Senator KERRY. Would be voted by the trustees?

Mr. MATTINGLY. Would be transferred to this independent trust and he would have the power to vote those shares.

Senator KERRY. Now clearly, whether or not an issue can be raised that any buyer of First American stock would not in fact get clear title because the issue of ownership would still be hanging out there.

Mr. MATTINGLY. Part of the trust arrangement that we designed and which we have put to the shareholders, the nominal shareholders included an authorization to the trustee to sell the shares without further shareholder approval.

Senator KERRY. So are you convinced, is there a legal opinion to the effect that such fear is unwarranted?

Mr. MATTINGLY. We believe so. We have 80 percent of the nominal shareholders voting in support of the proposal as well as the liquidators. So we have both claimants to the stock voting to transfer to the trust and we think that takes care of it.

Senator KERRY. Now that Mr. Ed Rogers has resigned the account, who represents Kamal Adham in his negotiations over the issue of the trustee?

Mr. MATTINGLY. There was a Mr. McMurray, Mr. Kamal Adham is represented by a Lebanese lawyer names Moussa Raphael and there is a U.S. law firm in New York, a Mr. McMurray who has represented Kamal Adham on the trust arrangements in front of the Federal Reserve. He has other U.S. lawyers that are representing him in connection with the enforcement actions that had been brought by the Federal Reserve against him. They would be Mr. Ed McDonald and Mr. Plato Cacheris.

Senator KERRY. Is there a particular reason why it has taken a year since the order to get the trustee installed?

Mr. MATTINGLY. It is an extremely complicated process because our order ran against BCCI and BCCI isn't the record holder of any of the shares. The shares are all held in these other individuals' names and those people are located all over the world. There are all kinds of conflicting claims to the stock, and it has just taken time to sort all of that out.

But with the help of the Justice Department and the plea agreement, I think we are pretty close to a solution.

Senator KERRY. Will the trustee, Mr. Albright have any responsibility for running day-to-day operations of First American?

Mr. MATTINGLY. No, he has all the authority of the shareholder. He of course can remove the directors if he is not satisfied with them, but he is not, as a shareholder he is not supposed to participate in the day-to-day running of the bank.

Senator KERRY. And it's our understanding that District Attorney Morgenthau recommended Mr. Albright, is that correct?

Mr. MATTINGLY. That is correct.

Senator KERRY. In the Washington Post of April 14th, this year, it was reported that representatives of First American Bank shares lobbied the Federal regulators to drop their plan to name an independent trustee to sell the bank, arguing instead that the bank's management should be allowed to handle the sale. Is that a correct characterization of the position of the management of First American at that point in time.

Mr. MATTINGLY. At that point in time they believed that basically they should be allowed to sell the banks, yes.

Senator KERRY. Was it Mr. Jerry Hawke of Arnold & Porter who was lobbying you folks with regard to that?

Mr. MATTINGLY. Mr. Hawke was one of the attorneys representing the management, yes.

Senator KERRY. Did he ever work for the Federal Reserve?

Mr. MATTINGLY. He was the General Counsel for the Federal Reserve I think between 1975 and 1978.

Senator KERRY. Did you once work with him?

Mr. MATTINGLY. I was employed in the legal division at that time, yes.

Senator KERRY. Did you work for him?

Mr. MATTINGLY. Yes, he was the General Counsel.

Senator KERRY. Do you have any sense of the appropriateness of him lobbying you with respect to that particular issue?

Mr. MATTINGLY. Let me just say it didn't—

Senator KERRY. I understand it didn't affect anything. I appreciate that and we respect you for that, but Washington is famous for this revolving door issue and I am just trying to raise the issue again of whether or not BCCI doesn't continue to haunt us even in the aftermath, that there is a continuation of that same sort of process which some have dubbed incestuous and others even more vitriolically than that, as part of the problem.

And so I am just asking you, is it appropriate? I will tell you that it strikes me as being inappropriate. Maybe there is a question of time and gap and so forth, and you cannot forever forbid people I suppose from being engaged in the pursuit of their chosen career, but on the other hand it is something that haunts us here a little bit.

Mr. MATTINGLY. Well, as you have pointed out, there was almost a 14-year gap between the time Mr. Hawke was with the Federal Reserve and today. Mr. Hawke is a leading expert in banking. He is very familiar with the enforcement powers of all the banking agencies including the Fed, and I suppose it would be natural for banks to retain the services of Mr. Hawke.

Mr. Hawke's appearance in front of the Federal Reserve didn't violate any ethical rules, either of the U.S. Government or of the Bar Association. [Pause.]

There is a question you asked before the break that I wanted to clarify. You asked me, had our investigators ever talked to Mr. Naqvi? During the break the investigators advised me that when they went to Abu Dhabi in March of 1991, they requested to speak to Mr. Naqvi as well as two or three other officers of BCCI, and they were granted an audience with Mr. Naqvi. He was represented however by U.S. counsel and would not answer any of our ques-

tions regarding the substance of the violations. But our investigators were granted access.

Senator KERRY. He was represented by U.S. counsel in Abu Dhabi?

Mr. MATTINGLY. Yes, he was.

Senator KERRY. Do you remember who the counsel was who represented him?

Mr. MATTINGLY. It was a Mr. Nicholas Tell from Chadd, Byrne & Park.

Senator KERRY. Another question I asked you earlier that I wanted to revisit is have you ever been denied any documents by the serious fraud office?

Mr. MATTINGLY. I am advised that we have been. We have been denied, some of our requests for documents have been denied, yes.

Senator KERRY. Do you know what the grounds—I don't know if the gentleman wants to add——

Mr. MATTINGLY. He didn't——

Senator KERRY. But we have made some requests of them, have we not, and they have in fact been denied?

Mr. MATTINGLY. Yes, on the other hand, we have made a number of requests of the serious fraud office and they have been granted. Earlier on in our investigation they were——

Senator KERRY. Were the documents that we requested BCCI documents?

Mr. MATTINGLY. Yes, related to BCCI yes.

Senator KERRY. Why would we be denied documents?

Mr. MATTINGLY. They may have been connected with their investigation, I am not sure.

Senator KERRY. I thought this was all one big cooperative investigative effort.

Mr. MATTINGLY. Well, I can only state the fact that we have made—I am advised that——

Senator KERRY. Could you submit to the committee a summary of precisely what documents were requested and what the circumstances of refusal were and if there are any accompanying explanations of refusal, for the record, we would like to be able to include what those might be.

Mr. MATTINGLY. We will do that.

Senator KERRY. I would appreciate it. I would like to turn for a moment to the National Bank of Georgia. Has the National Bank of Georgia been sold now?

Mr. MATTINGLY. Substantially, all of the assets of the National Bank of Georgia have been sold, yes.

Senator KERRY. For how much?

Mr. MATTINGLY. I believe it was a \$20 million premium over book value.

Senator KERRY. What was book value? How much did you get for it?

Mr. MATTINGLY. Something like \$90 million, we didn't get, but First American——

Senator KERRY. \$90 million?

Mr. MATTINGLY. \$90 million.

Senator KERRY. And to whom was it sold?

Mr. MATTINGLY. The assets were sold to the South Trust Banking Group from Alabama.

Senator KERRY. First American purchased the National Bank of Georgia for \$225 million in 1985.

Mr. MATTINGLY. Yes.

Senator KERRY. In your view, notwithstanding the discount for loan problems and real estate and what has happened, was that 1985 price an inflated price?

Mr. MATTINGLY. You have put your finger on one of the critical elements that the Federal Reserve is investigating and that is the terms and circumstances under which First American bought the National Bank of Georgia in 1987. In our, I think—the Federal Reserve believes that there is a serious question there about the influence of BCCI in that particular transaction, yes.

Senator KERRY. And the question as to whether or not BCCI may have set the price, dictated the process and in fact engaged in a fraudulent transaction?

Mr. MATTINGLY. I think the Federal Reserve's notice alleges that that is the case.

Senator KERRY. Have you yet made a determination whether that purchase was made by First American independently or directed by BCCI? Have you made that threshold decision?

Mr. MATTINGLY. The information that's available to us indicates that that was very much caused by BCCI, that particular transaction. We just haven't been able to get—we haven't been able to get the full details of how First American actually made the decision to purchase the bank. But the record is very clear that that transaction was—substantially benefitted BCCI.

Senator KERRY. Have you investigated the offshore banking activities of the National Bank of Georgia?

Mr. MATTINGLY. If you're referring to the Edge Act subsidiary.

Senator KERRY. The Cayman Island branch.

Mr. MATTINGLY. It is a shell branch apparently. Yes, our examiners have looked at that.

Senator KERRY. Have you made any criminal referrals based on that investigation?

Mr. MATTINGLY. No, sir.

Senator KERRY. Is there a thought to that? Is that in the works?

Mr. MATTINGLY. I don't think that we found anything at the branch that indicates any kind of criminal activity.

Senator KERRY. Did they do a lot of business with ICIC?

Mr. MATTINGLY. They being—

Senator KERRY. The Cayman Islands branch, the shell corporation.

Mr. MATTINGLY. I would have to get that information for you, which I will do.

Senator KERRY. I appreciate that. Also I had some inquiries, but I could submit those. There is no reason to draw this out at this point. We will have some additional questions we would like to submit for the record to you, just in writing.

In the hearings that we had in October, Senator Brown asked both Messrs. Clifford and Altman if they were aware of any loans at First American that were on as favorable terms as the loans that were provided to them for their purchase of stock. As you

recall, the terms included—I think you recall the terms, the multi-million dollar loans, the 100 percent finance, and so forth.

In your examination of First American's loan portfolio at this time, and you have conducted such an examination, have you not?

Mr. MATTINGLY. Yes.

Senator KERRY. Were there any other loans made on a comparable basis?

Mr. MATTINGLY. Well, remember, First American did not make those loans to Clifford and Altman. Those loans were made by BCCI.

Senator KERRY. I understand, by BCCI.

Mr. MATTINGLY. We found no loans in the First American portfolio that were like that.

Senator KERRY. Fine. Besides CenTrust, the National Bank of Georgia, and the Independence Bank, is there any other financial institution that you have come across, either of you, either through nominees or attempted takeover or otherwise, that was touched or attempted to be touched by BCCI?

Mr. MATTINGLY. There were other banks that our information indicates they considered making an acquisition of. My recollection is at least one other bank.

Senator KERRY. The subcommittee has information that there may be another bank that they actually had an interest in. Have you determined whether or not that might be true?

Mr. MATTINGLY. There is a small holding in a bank in California that we are looking at, yes.

Senator KERRY. Well the one I am referring to is actually in another State.

Mr. MATTINGLY. I have no information.

Senator KERRY. Maybe we could followup with you on that also, and see if that is not something you could help determine in the weeks and months to come.

Mr. MATTINGLY. I would be most interested in that.

Senator KERRY. Let me ask both of you gentlemen in summary, are you satisfied that you are receiving sufficient cooperation to enable you to get to the bottom of this thing, or is the cooperation going to have to improve?

Mr. MATTINGLY. I think as far as the Federal Reserve is concerned, we're getting excellent cooperation here in the United States. I think overseas, there is a lot of cooperation that we need from other foreign jurisdictions, yes.

Senator KERRY. You still need more.

Mr. MATTINGLY. Yes, we do.

Senator KERRY. You cannot get to the bottom of it at the current rate and quality of cooperation.

Mr. MATTINGLY. Senator, I think it is absolutely imperative that the Federal Reserve and Mr. Morgenthau and the Justice Department have access to BCCI employees in Abu Dhabi, and that we also have access to all of the documents of BCCI that are in Abu Dhabi.

Senator KERRY. Well I want to say that when that plea agreement was made, there were many positive aspects of the plea agreement. But the one concern that I expressed at the time was that it did not become a buy-out of accountability; that it did not

become a means of putting everybody at rest with a sense that all of this was going to flow automatically, of letting some time pass so that oversight and vigor might suddenly melt away.

And a year has now progressed, which is ample time for a lot of these requests to have been answered. And I think it speaks for itself that we are here one year later and that many of these requests have only been met in the 3 weeks leading up to this hearing. It is my hope, obviously, that we do not have to have another hearing in August or in the fall. Maybe we ought to anyway.

I think that there is a gentility to this hearing thus far that belies, to a degree, the gap between the date that a cooperative process was promised and our being here today. And it is my hope that you folks will not have to come back here and suggest to us that you are still struggling on this. Because I think there are means available to the Fed, to the Justice Department and others, that could play it a lot tougher in terms of raising this as an issue of international concern and of domestic interest.

Mr. MATTINGLY. Well I want to assure you that we, at the Fed anyway, haven't come to rest. Our people are still spending substantial amounts of time trying to get to the bottom of this, and we will.

Senator KERRY. I appreciate that, and I thank you both for being here. We will leave the record open with respect to the additional inquiries that we want to submit to you and I thank you both for being here.

It is now 12:40 and so we will reconvene at 1:45 p.m., and we stand in recess until that point in time.

[Whereupon, at 12:40 p.m., the subcommittee adjourned, to reconvene at 1:50 p.m., the same day.]

AFTERNOON SESSION

Senator KERRY. The hearing will come to order. We will proceed now with the private panel of the Hon. Nicholas Katzenbach, chairman of First American Bankshares; and George Davis, president and CEO of First American Bankshares. Gentlemen, if you could come forward.

Well, before you sit down, let me just swear you in here, if I can quickly. If you would, raise your right hands. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God.

Mr. KATZENBACH. Yes.

Mr. DAVIS. Yes.

Senator KERRY. Thank you.

Thank you very much for joining us today, and I appreciate your patience in arranging a time to be here. If you could each identify yourselves for the record, I would appreciate it.

TESTIMONY OF HON. NICHOLAS KATZENBACH, CHAIRMAN, FIRST AMERICAN BANKSHARES, WASHINGTON, DC

Mr. KATZENBACH. My name is Nicholas Katzenbach and I am chairman of First American Corporation and First American Bankshares Inc. And other things, but that is all for the purposes of this committee.

**TESTIMONY OF GEORGE DAVIS, PRESIDENT AND CEO, FIRST
AMERICAN BANKSHARES, WASHINGTON, DC**

Mr. DAVIS. I am George Davis. I am president and chief executive officer of First American Bankshares.

Senator KERRY. I appreciate your taking the time to be with us today. I do not think this will be a very lengthy or complicated panel at all. What the committee is trying to do is get an overall view of where we are today with respect to a lot of the issues that were left hanging once the bank of BCCI was liquidated, and also once the ownership issues came to question as to a number of its different affiliates and the status of those affiliates. Clearly, First American Bankshares has been of enormous interest to this area because it is a large bank in the capital city and also because of the high visibility that the ownership issues and personalities brought to this issue.

If you have any opening statements either of you wish to make with respect to the current status of First American Bankshares, we would welcome those. If you want to put them in the record and summarize, we would also welcome that. It is your choice.

Mr. KATZENBACH. We have submitted a statement which will do for the two of us, Senator, and I appreciate it. I have no desire to read out loud.

Senator KERRY. Then without objection, the full statement will be placed in the record as if read.

[The prepared statement of Mr. Katzenbach follows:]

PREPARED STATEMENT OF NICHOLAS KATZENBACH

SUMMARY

The Directors and management of the First American banks have been actively engaged in preparing the various banks for sale at a fair value. We believe the principal value of the banks lies in the core franchise in the metropolitan Washington area. Accordingly, the Tennessee, Georgia and Florida banking operations have been sold and Upstate New York is presently being bid on.

To sell the core Washington metropolitan franchise requires taking steps to improve the management and profitability of those banks, to recapitalize them and establish a structure which will facilitate a sale. Important new hires have been made as have organizational realignments to streamline operations and reduce costs. A capital plan, which we believe will put all of the banks in compliance with Federal and State regulations through 1993, has been submitted. And, a recapitalization plan, accomplished through the establishment of a non-regulated liquidating finance company to acquire non-performing loans, is near completion. Such a structure should permit us to sell, in the near future, the operating banks for a fair franchise value as going concerns.

We have joined with the regulators and enforcement authorities in urging our shareholders to approve the transfer of shares of First American Corporation to a court-appointed trustee, who would have all the powers of a sole shareholder.

No documents or other evidence have been withheld from government regulators or this Subcommittee as a consequence of the Joint Defense Agreement between Messrs. Clifford, Altman, CCAH and CCAI (our parent corporations), nor will it. Indeed, last summer First American waived even its attorney-client privilege to make it clear that we were hiding nothing from the authorities.

Mr. Chairman and Members of the Subcommittee: I am testifying here today in response to your invitation of April 29, 1992 and I am accompanied by George Davis, who is President and CEO of First American Bankshares. You have requested that my opening statement address certain issues, and I will attempt to do so.

Following the resignations of Clark Clifford and Robert Altman from the Board of First American Bankshares and its affiliated companies, I was invited by the re-

maining Directors to assume the Chairmanship. That invitation was endorsed, and my acceptance actively encouraged, by representatives of the Federal Reserve and the British liquidators. It was obvious from the beginning that the first order of business should be to attempt to hire a new Chief Executive Officer who, in turn, could bring in some experienced management to the extent necessary in order to prepare the banks for sale. Given the problems of Bankshares, stemming from the widespread publicity of its association through stock holdings with BCCI, as well as the general economic problems affecting real estate loans all along the east coast, - attracting a CEO of recognized competence was not all that easy. For one thing, both the new CEO and the Board of Directors, including myself, believed that we needed to have indemnification agreements which were not wholly dependent upon the assets of the banks through insurance or otherwise. It was not until December that we were fortunate enough to secure such indemnity and the agreement of Mr. Davis to serve as CEO, and in my view—which I believe is shared by the regulators—he has done an outstanding job.

At the time I took over the Chairmanship of First American, it owned three banks in this area, one in Washington, D.C., one in Silver Spring, Maryland, and one in McLean, Virginia, which are known collectively as "Metro" and which we believe constitute the principal value of First American Bankshares. In addition, at that time First American owned the First American Bank of New York, headquartered in New York City, and four banking operations in the Southeastern United States, one in Knoxville, Tennessee; one in Atlanta, Georgia; and one in Pensacola, Florida, together with an "Agreement Corporation" in Miami, Florida. It was obvious that the banks outside the metropolitan area should, if possible, be sold as quickly as possible since they added little to the core value of the franchise. Accordingly, we hired an investment banking firm to do so, and before Mr. Davis came on board, we had successfully sold the Tennessee operation and were in the process of preparing for the sale of the others.

Since Mr. Davis assumed the CEO's job we have successfully closed the sale of the Atlanta and Pensacola operations and have entered into a contract to sell the Agreement Corporation in Miami. We are in the process of soliciting bids for the Upstate New York operation, which we should be able to sell at a reasonable price in the very near future, and the New York City operation, which will be considerably more difficult because of an unfavorable long-term lease.

As this Subcommittee is aware, First American has been severely damaged as a result of its alleged ownership by BCCI. Last August, for example, the Metro banks suffered a decline in deposits of \$580 million, or 10.56 percent of their total deposits in the span of 4½ weeks. In addition, all of the banks currently owned by First American have credit portfolios with non-performing assets far above levels where they should be. This has led, over the last two years, to additions to the loan loss reserves which have contributed to the banks' operating losses.

Due to their financial conditions, all of First American's banks are working today under one or more orders or agreements from the various banking regulators who are involved. All of these require not only a series of management actions that will restore the loan portfolios to health but, in some cases, capital ratios higher than those now existing and certain changes in management practices.

As I have said, our program is based on the assumption that the metropolitan Washington area banks are an attractive franchise and a potential source of substantial value. Their marketability is not enhanced, indeed, it is hindered by the New York and Georgia operations. It is for that reason that we have focused on the sale of these latter banks. In addition, the redeployment of capital and management attention to the Metro banks is vital. We believe that in order to achieve a satisfactory sale of the Metro banks, it is essential that we move, within the next few months on two fronts: first, that we improve management and profitability within those banks and second, that we recapitalize and establish a structure which will facilitate a sale. The two go hand in hand.

Since coming on board in December, Mr. Davis has hired a senior credit officer responsible for policy, practice and procedures in the credit review function and the management of the remedial assets in Georgia, Metro and New York. We have hired both a General Counsel and a Deputy General Counsel who are well qualified for their jobs and which, we very sincerely hope, will help us to reduce the enormous legal bills that we have encountered. We have hired a new head of Human Resources and a new Controller to assist in the treasury and MIS functions and an experienced transactioner has been added to aid in the restructure of the ownership. Organizational realignments of a major nature have been made in New York and in Metro, and in order to achieve more efficient operations and substantial cost savings, a major flattening of the table of organization in Metro has been approved. We

have added an experienced investment banker to the Board of Directors to assist in appraising the fairness and the best method of selling the various banks, especially Metro.

We have engaged a consultant to review our loan classifications and determine whether they were reasonable given the condition of the individual credits and whether our reserves in Metro and New York are adequate. The answers in both cases were positive. And, finally, we are in the process of engaging professional help to aid us in optimizing and liquefying our investments in our Downtown Washington headquarters, as well as the two buildings at Tysons Corner.

Obviously, we must have an adequate capital plan. Such a plan was submitted to the Federal Reserve Board at the end of last month. We believe that this plan puts us into compliance at all of our banks through 1993, and will enable us to effect an orderly transfer of ownership long before then. That plan involves the sale of assets outside the Metro bank area in the hope of strengthening that area to realize the best possible value for it in the near future.

The sale of the Metro banks will finally resolve the ownership question which concerns the regulatory agencies, and, of course, this Subcommittee. There is no question in our mind, or, to the best of our knowledge in the minds of our stockholders and the liquidator, that this sale should be accomplished on a timely basis. This sale should not require any financial assistance from the government. As Directors, we have an obligation to the stockholders, whoever they may be, to maximize its proceeds. That is what we are in the process of doing on a most urgent basis.

The management of First American, together with our expert investment banking advisors, believe that the economic difficulties of the banks can be solved and that there can be a preservation of economic value. The best way to preserve such value is to recapitalize First American through the establishment of a non-regulated liquidating finance company which would acquire the non-performing assets of the operating banks. Such a structure would remove from the banks the drag on earnings associated with non-performing loans. The operating banks with a clean portfolio should then be able to be sold for a fair franchise value.

The liquidating finance company would be capitalized with equity and loan reserves transferred from the existing banks, senior debt from new public or private investors, and subordinated debt from existing shareholders of our holding company. Under our plan, we believe that it is clear that the loans that would be infused in the liquidating finance company either have been or will be written down to such a point, and would have sufficient collateral backing, that over a reasonable time the cash flow would repay the proposed debt of the finance company. The premium to be gained from the sale of the clean operating banks, together with any residual cash flow from the finance company, would return substantial monies that would go to repayment of existing debt and some realization of equity at the various bank holding company levels. We are in the process of discussing with existing stockholders, and, in the near future with others, the prospect of infusing such capital into the non-regulated liquidating finance company. We believe that over the next twelve months, and in all probability by the end of this calendar year, we will have effectuated both this recapitalization and the sale of the remaining banks.

As you know, we have recently joined with the regulators and enforcement authorities in urging our shareholders to approve the transfer of the shares of First American Corporation to a court-appointed trustee. The regulators believe this is a useful step and that the court-appointed trustee, who will act with the consent of the shareholders as well as the approval by the court, will do much to give confidence to depositors that the ownership of the bank is a problem that no longer exists, and to potential purchasers that there is no problem in giving good title to bank assets. The trustee would, of course, have all of the powers of a sole shareholder of First American Corporation, and, if he were not satisfied with our efforts to sell the bank, he would have the power to replace us in that function.

The appointment of a trustee would remove doubts as to the legal status of First American's ownership. What will remain after the sale of the bank, which the existence of a trust should assist, is simply the resolution of how to distribute whatever monies there are to the legitimate shareholders. If we can carry through all our plans in this regard—and I have no reason to doubt that we can—I believe the prospect for the sale of the banks is excellent, and that this will be accomplished, as I have indicated, in the very near future.

You have also inquired as to any actions undertaken to date in connection with First American's Joint Defense Agreement with Mr. Clark Clifford, Mr. Robert Altman, CCAH and CCAI. The short answer to that question is that no actions have been or will be undertaken which would in any way withhold any relevant information from the law enforcement or regulatory authorities. I have so advised the pros-

ecutors in writing, as have First American's outside counsel that have been principally responsible for responding to the prosecutors' requests for information. In point of fact, when I came into this job I agreed with these authorities that First American would waive the attorney-client privilege as to all historical documents relating to the matters under investigation. Frankly, as a matter of general principle, I have always been reluctant to waive the attorney-client privilege because I believe that it serves an extremely useful function. However, in the case of First American, given the publicity surrounding the BCCI scandal, I thought it important to demonstrate that we had nothing to hide. We do have nothing to hide, and I hope that this waiver of the privilege has demonstrated that.

Mr. Davis and I would be happy to respond to any questions which the Subcommittee may have.

Senator KERRY. Would you, both of you, perhaps share with the committee how you have come to your current roles.

Obviously, Mr. Katzenbach, we are very familiar with your many roles played, your distinguished career. And this is reflected, I think, in the role you are now playing in ways that you might not indicate. But other than that, technically would you share with the committee what your current role is and what you are currently engaged in.

Mr. KATZENBACH. My current role, Mr. Chairman, is as chairman of the bank and chairman of the board of directors. And the principal function played in that role, which I have had since mid-August, has really been to hire a chief executive officer. I do not claim to be a banker and I do not claim to know all the ins and outs of banking, or even all the laws of banking any more than I've been exposed to. So my first job was simply to hire a chief executive officer and I did that, and Mr. Davis came aboard in December.

It has been clear, I think, since the moment that I agreed, with considerable reluctance, to do this, that the banks had to be prepared for some form of divestiture sale, because of the ownership problem and the fact that the ownership problem was not going to be resolved in a hurry. And that was an anchor on the operations of banks that I consider to be—at least the Washington franchise—a very valuable franchise. Some of the others appear to be quite good, although not synergistic with the metropolitan Washington banks.

So we've been doing that in the course—since I have been there and since Mr. Davis—well before Mr. Davis joined us, we had sold the Tennessee bank. We just got the Georgia bank sold. We have a contract for the Miami bank. The upstate New York banks are for sale. And we are in the process of developing and have very nearly completed the development of a plan which should permit us to re-capitalize and sell the metropolitan Washington banks. And when that is done, I will happily go home.

Senator KERRY. So it is fair to say that your role has really been one that you have assumed since both Messrs. Clifford and Altman resigned. And you have been brought in, effectively, to try to clean up the mess. Is that right?

Mr. KATZENBACH. Yes, to the extent there was a mess, that's true. It clearly was a mess in some respects. What I wanted to make clear when I said that, Senator, is that while I think there are improvements that can be made in the operation of the bank and I think we've done that, and are in the process of making even

more and cutting some costs and so forth, I want to emphasize that the banking operations were all right.

Senator KERRY. The banks, per se, were in ordinary respects operating all right, and I do not think anyone has ever alleged otherwise in the course of these hearings. Can you tell us today who owns First American Bank?

Mr. KATZENBACH. No, sir. I know who the stockholders of record are. Well I don't know who they are but I can find out who they are, I have those records. And there is no way of our knowing—the Government believes that somewhere between 40 and 70 percent, I think, of those may be front people for the real ownership of BCCI. And I have no way of knowing that. I know nothing other than what the Government says.

Senator KERRY. I take it that the government of Abu Dhabi or the royal family of Abu Dhabi, as principal shareholders, have made a significant capital infusion in the last year or so. Is that accurate?

Mr. KATZENBACH. That is correct, sir, in the form of debt.

Senator KERRY. In what amount?

Mr. KATZENBACH. A little over \$200 million.

Senator KERRY. Is there more that the government of Abu Dhabi has done to assist you in your process now?

Mr. KATZENBACH. Yes. Because with respect to that debt, they have waived various due dates with respect to repayment so that there could be no default. Perhaps there is something else. George?

Mr. DAVIS. No, I think that is right.

Senator KERRY. Has First American promised anything in return to those shareholders?

Mr. KATZENBACH. No, sir. Other than the fact that we try to run the bank as well as we can.

Senator KERRY. When First American is sold—which you are seeking to do as soon as possible. Is that accurate?

Mr. DAVIS. That is correct.

Senator KERRY. When it is sold, who will the proceeds of the sale go to?

Mr. KATZENBACH. Well at first—the proceeds of the sale will first go to all the legitimate creditors of the bank. When that is done, the proceeds will be paid to the court and will then go in accordance with what—assuming that Judge Greene takes jurisdiction of this, they will go in accordance with whoever the ownership is. In other words there's a fund in the court which will be—

Senator KERRY. It will be divided among owners yet to be determined.

Mr. KATZENBACH. Yet to be determined. And I suppose there will be claims from the liquidator, from whom you will hear later that he believes that a fair amount of that ought to come to him, if there is anything there.

Senator KERRY. Is there an expectation as to when that sale might take place?

Mr. KATZENBACH. We would hope that it would take place in the next few months, perhaps by the end of the year, certainly within 12 months.

Senator KERRY. Does the government of Abu Dhabi that has recently made loans stand in first position as to repayment from the proceeds of the sale, on those loans most currently made?

Mr. KATZENBACH. It would stand in a position of a creditor on those loans. You say first position, yes. Ahead of the equity, but obviously not ahead of other creditors.

Senator KERRY. Can you tell the committee what the total indebtedness is to those creditors currently?

Mr. KATZENBACH. To creditors other than Abu Dhabi.

Senator KERRY. Other than Abu Dhabi.

Mr. KATZENBACH. I don't really know that I can. It would be just a few million dollars.

Mr. DAVIS. It is a small amount.

Senator KERRY. So in any sale of the bank, it is anticipated there would be revenues sufficient to repay the loans, take care of the creditors, and have some kind of payout to shareholders.

Mr. KATZENBACH. That is what we would hope, Senator. I can't guarantee that will be true. I do think Mr. Davis and I both feel that this will be done without any cost to the taxpayers quite clearly. And we certainly would hope that—well, we have an obligation, sir, to try to maximize the price of that as best we can. That is our obligation as directors, even if you don't know who the shareholders are.

Senator KERRY. Are there any impediments to that sale that the committee should be aware of or that you are currently concerned about, that involve any agencies of Government or any nonperformance with respect to any of the agreements currently outstanding?

Mr. KATZENBACH. No, sir, not that I know of.

Senator KERRY. So the liquidation process, the plea agreement, agreements to cooperate, are all at this point, from your perspective, operative, working, and present no problem.

Mr. KATZENBACH. I believe that is correct.

Mr. DAVIS. That would be correct.

Senator KERRY. Is there any impact of the trust structure in terms of facilitating or restricting a sale?

Mr. KATZENBACH. I would say this: I think that it could facilitate the sale in the sense that having a large percentage, pretty nearly 80 percent of the stock, in the hands of the trustee facilitates the sale in terms of ensuring that any purchaser has got good title and doesn't have to be concerned about that, so I think that facilitates it.

The only thing I think that would not facilitate it, and I don't anticipate that this would happen, would be a conflict between the directors and management of the bank and the trustee. If that occurred, I think it would be most unfortunate. I don't intend it to occur. I don't know why it should occur. If it did, and there's always that risk, I suppose, then I think that would be most unfortunate.

Senator KERRY. There's nothing on the face of the trust agreement or of any other relationship you're currently aware of that should suggest such a tension.

Mr. KATZENBACH. I don't think so, Mr. Chairman. The point—the only problem that I've ever had with the trust, and I've supported

a trust, but I had envisioned—in fact, it was a condition of my taking on the job initially that there be a trust. I had always envisioned, as I essentially do today, a passive trust.

That is to say, that we in the customary way, that the directors and the management would go about operating the bank and running the bank and selling the bank, and at the point that we sold the bank, the trustee would take a look at the sale and would say yes or no, that he would not be actively a participant in the selling of the bank. That's the way I envisioned it, and I believe that is the way it is presently structured.

But there is language in the draft order that would say the trustee is exercising his best efforts to make us sell the bank, and so forth, which I regard as slightly insulting, because it is my intention to do so anyhow, but I don't think should get in the way, and we have been assured at least by the regulators that we will have some 12 months to do it as long as we're in the process of proceeding and longer, if necessary, which it won't be.

So I don't anticipate any problem.

Senator KERRY. I think that is a fair statement of it, and I did want to understand your sense of that relationship.

Mr. KATZENBACH. I think, Mr. Chairman, that to my mind it is impossible to separate the sale of the bank from the management of the bank. What we're doing now in the management of the bank is to try to take those steps which prepare the bank for the best kind of sale you can get, and to my mind the two go together. I think in all the corporate law I know they've always gone together, and I think it would be unfortunate to separate them.

Senator KERRY. Along those lines, if I could ask you, in preparing the bank for its best selling position, Tennessee has been sold off, the Florida branch is sold off, the National Bank of Georgia branch is now sold off.

Some have suggested that the bank would have been in a much stronger position with its interstate network rather than separated off, and I wonder if you would address that.

Mr. KATZENBACH. I will let Mr. Davis address that mainly, but let me say that nobody that I know of familiar with the operations of this bank, including the investment bankers that we consulted, including three firms of investment bankers, have taken that position.

Mr. DAVIS. Historically there were seven banks, if you go back a year ago. Unfortunately, nobody understood in management that—to the best of my knowledge what a unique franchise they had on the East Coast of the U.S., with the banks ranging from Miami up to Syracuse, New York, and unfortunately each of the seven banks was operated as a separate bank with no relationship to the others.

Within their own markets none of these banks had any reasonable market share, other than the three Metropolitan Washington, DC banks. Therefore, when we looked at the seven banks we saw four little banks, each a minor factor in its own market that best made sense belonging to somebody else, and this is why we have begun to peel them off.

Senator KERRY. Fair enough. In terms of the New York branch, was that ever profitable in its decade of operations?

Mr. DAVIS. There is a New York bank which really separated into two pieces. There are approximately 40 upstate banks, somewhere around Albany, Troy, Utica, in that area, which are about half of the size of the operation which are quite profitable, and have been. It is a very viable franchise. The downstate business is barely break-even. It was a three-branch network in the middle of a very large competitive market, and no, it was really not a viable operation.

Senator KERRY. Separating out the downstate branch, the New York City branch, have you been able to determine what the rationale was for opening that particular branch, given its size and lack of profitability?

Mr. DAVIS. I actually have no facts on why it was opened. I mean, I think there is some conjecture there. There were three branches in New York City, two of which were purchased from Banker's Trust. At the same time the upstate branches were purchased from Banker's Trust the other and third branch was opened de novo in 19—January 1, 1983, prior to the purchase of the Banker's Trust branches. I can only speculate as to why.

Senator KERRY. Is it your belief personally that that had a legitimate business purpose, banking purpose?

Mr. DAVIS. I can certainly assure you, as it has turned out it was not a viable operation. I can't tell you what the rationale was at the time, because I just wasn't there.

Senator KERRY. In 1987, First American purchased certificates of deposit of \$45 and \$14 million from BCCI's Grand Caymans affiliate, ICIC. They did that despite the fact that ICIC was not a bank, but essentially a conduit for BCCI, which it used to falsify its own situation, inflating its assets.

As you've reexamined this, have you come across anything that explains why First American purchased those CD's from ICIC in 1987?

Mr. DAVIS. The answer from my standpoint would be no. I have focused my attention prospectively and not retrospectively. The past has been, I think, very thoroughly gone over by a number of people and I have not spent my time there because I felt that my time would be better spent trying to resolve the ownership issue, which is a today problem.

Senator KERRY. So at this point you have not tried to unravel the series of relationships.

Mr. DAVIS. No.

Senator KERRY. Have you, Mr. Katzenbach?

Mr. KATZENBACH. No, I have not. I have taken the same view. I think that there are a lot of very competent people, including this committee and its staff, who are trying to unravel those things, and if we came across anything that did unravel them, obviously I would make it available to the prosecutors and to this committee. We have come across nothing, but then I haven't really looked for it.

I would emphasize only that the only thing I have made any inquiries about was whether we ever did anything that was unlawful—did the banks ever do anything that was unlawful, and I have found nothing that we have done that is unlawful, and I believe in

fact that view is shared by the various prosecutors and the Fed has essentially said that in testimony before this committee.

Senator KERRY. Have you examined the joint marketing relationship that existed between First American and BCCI, i.e. the joint accounts that were opened, the sort of embassy visit strategy and so forth? It was a clear mixing of the relationship there. Has that been examined by you at all?

Mr. KATZENBACH. Not really, Senator.

Mr. DAVIS. No.

Senator KERRY. So when you make the judgment as to whether the bank engaged per se in any kind of, quote, unlawful activities, close quote, that's really without a full examination of the network of their relationships.

Mr. KATZENBACH. No, of course that's true, Mr. Chairman. All I have done is try to ascertain that from the prosecutors and the Fed, who had much more information for many more months with more people than I did, and the other thing I did when I first came on, I went and talked to the top people in all of the banks and asked them if they were aware of anything that had gone on of this kind that was unlawful, and I got a denial from them, and that's about as far as I've gone which is not very far.

Senator KERRY. Leaving aside the question of lawfulness, as a professional banker, Mr. Davis, is it your judgment that the kinds of relationships that you I would assume have become aware of in terms of linkages between BCCI and First American, were they normal?

Mr. DAVIS. Again, let me—

Senator KERRY. Now, I'm not trying to get into this.

Mr. DAVIS. I understand, sir, exactly what the question is, and I just want to make sure, Senator, that you are aware that I have spent the bulk of my time on today and not on yesterday, given the fact that there have been so many competent people looking at yesterday for other purposes.

I am aware that there were joint marketing efforts between the two banks. As a professional banker, I can assure you that I have often seen joint marketing efforts between the two banks.

Now, I don't know enough, frankly, about these particular marketing efforts in detail to tell you if there was anything unusual about them, but I am certainly well aware of the correspondent banks and correspondent banking, and I have certainly myself pursued when at Citibank or at First Chicago joint marketing efforts.

Senator KERRY. Just a few more questions.

Last May First American signed a joint defense agreement with Messrs. Clifford, Altman, CCAH, and CCAI, and this was in connection with the criminal investigations in the New York District Attorney's Office, the Justice Department, the Federal Reserve.

Under that agreement, First American as a bank was not required to share documents with law enforcement provided by either Messrs. Clifford or Altman or other parties to that agreement. Is First American still bound by that joint defense agreement?

Mr. KATZENBACH. Yes.

Senator KERRY. You are. Why would that be? Why would there be a continuing restriction?

Mr. KATZENBACH. I don't think it makes much difference one way or the other. We haven't exchanged any documents, no document has been withheld from this committee, from anybody else as a result of that agreement.

I don't think it makes much difference whether the agreement exists or not. If—if I take a hypothetical, if officers of the bank were indicted and the bank were indicted we would have a joint defense agreement. I don't think there's any question.

Senator KERRY. But in the context of discovery—

Mr. KATZENBACH. In the context of discovery today, you know one of the first things I did when I came in, Mr. Chairman, was to waive attorney-client privilege. I didn't like to do that, and I don't think it is proper for prosecutors to request it, but they did, and I waived it because I wanted to make it absolutely clear we were withholding no information whatsoever from the prosecutors, from this committee, from anybody, and we have withheld none.

Senator KERRY. I understand that.

Mr. KATZENBACH. Whether we had an agreement or didn't have an agreement.

Senator KERRY. But would that waiver not in fact obviate this agreement?

Mr. KATZENBACH. Technically it would not obviate it. In fact, it has. I say technically it would not, Mr. Chairman, because I suppose if a document that was privileged for some other reason than our privilege was shared with us under that agreement, that it would remain privileged in the hands of the person who initially had it. That hasn't happened. It's not going to happen.

I don't have any problem terminating the agreement if that's something that you would desire. I don't want to give the impression that there is anything wrong with the agreement. I didn't know about the agreement until a Wall Street Journal reporter kindly called me up and said he had a copy of the agreement from the prosecutors, which I resented.

Senator KERRY. Fair enough. I am simply trying to inquire what the status is at this point of either the agreements or the cooperative effort. Have you been able to determine, either of you, whether or not the NCNB, now Nation's Bank, offer of the \$1 billion for purchase in 1990—have you determined why that didn't come to fruition?

Mr. KATZENBACH. The only information I have is that for some reason or another shareholders didn't want to sell at that time.

Senator KERRY. Was \$1 billion at that point in time a realistic price for the bank based upon your knowledge of it at this time?

Mr. KATZENBACH. I would think the bank was probably worth \$1 billion at that time.

Senator KERRY. Do you think so, Mr. Davis?

Mr. DAVIS. It is difficult. I'm not trying to duck the question. I'm just saying 2 years later lots has changed. I don't know what kind of an offer it was. I don't know if it was a bona fide written offer. \$1 billion sounds maybe modestly high to me, but who is to know?

Senator KERRY. Has there been any effort to reach out to them to determine whether or not a merger or some kind of bona fide follow-up might be available?

Mr. DAVIS. Where we are now is in the middle, working with our investment banker, putting together, as they say in the trade, the book on the three metropolitan banks which should be done reasonably shortly. We will then go out and talk to a large number of people who might be potential investors, inclusive of Nation's Bank.

Senator KERRY. Let me just wrap this up. Is there anything at this point with respect to the plea process or the current investigations that stands in the way of your ability to be able to sell First American?

Mr. KATZENBACH. I believe the answer to that question is no. I can imagine a purchaser who would want some kind of assurance with respect to the RICO statute as indeed they did in Georgia, because that allows you to follow through even to a bona fide purchaser, or at least there are those who fear that it might. It has never happened, and I don't think it ever will, but that's the only kind of thing, and it is a nit.

Senator KERRY. And I think in fairness much has been written about this bank and obviously shareholders have suffered, at least potentially.

The committee has never had any evidence to the effect that there were widespread illegalities within the lower-levels of the bank, and the committee has never had a sense other than that the lower-level operations of the branches were operating within the law and appropriately within their own sphere, and that whatever indiscretions may or may not have been committed they were at the highest level, without the knowledge of the lower-levels. Is that a fair statement of what you have found as you take over this bank?

Mr. DAVIS. Yes.

Mr. KATZENBACH. Yes, I think it is, Senator, and I appreciate very much your saying that, because I can't tell you how many people have asked me how are things going with your chairmanship of BCCI? [Laughter.]

Mr. KATZENBACH. Anything that helps and that statement is helpful, and I greatly appreciate it.

Senator KERRY. The principal exception to what I have said is that if there were any transgressions within the workings of First American it was BCCI employees who were placed there and not by First American's employees.

Mr. KATZENBACH. I know of nothing of that kind, and I hope that there is nothing of that kind.

Senator KERRY. I think, to the best of our knowledge, the bank and its branch levels and throughout its workings was victimized.

And it is one of the sad parts of this, is that there are a lot of good folks who are working in some of these banks who became big victims in the process.

Mr. KATZENBACH. I would like to say I think it makes employees of First American nervous, from time to time we talk about sale, Mr. Chairman. And I think I would like to make it clear, as I know you understand, that what we are attempting to do is to sell ongoing, operating banks, so that the employment of the people will continue under new ownership and that the depositors will have

the same service that they have had improved if we can improve it and that sort of thing.

So it is not as though we are going out of business or anything of that kind.

Senator KERRY. I accept that and appreciate your saying that. We understand it to be exactly that way.

Was the joint marketing agreement instituted, to your knowledge, solely through the New York branch to the Washington BCCI employees, or did that extend beyond them to another level of the bank?

Mr. DAVIS. I am not sure. Let me see if I can rephrase the question to make sure that I understand it. Are you saying did this happen other than in Washington and/or New York?

Senator KERRY. What I am saying is that as I sit here I heard it was a high-level subterfuge here which involves the personalities of First American who have been well advertised in the course of these proceedings, or there was the grand victimization. And that has not been sorted out yet.

But the question still hangs out there as to how this joint marketing was implemented and at what levels. That is the question.

Mr. DAVIS. Yes. Again, not being here and only vaguely aware of it just because it has been part of the atmosphere, it would appear that it happened. Whether it was implemented is maybe the wrong word. But it certainly happened in Washington and it happened in New York and it happened at what I would call the general account officer level, that the people responsible for doing business were doing joint marketing together.

I know of nothing, and I have heard of nothing, that would suggest that it was being done at a high official level.

Senator KERRY. I have a note here. I have to call the cloakroom, but let me just, on that note, I think we have covered the areas that are of greatest concern to us with respect to this process at this point in time.

Are there any outstanding requests that you are aware of that have been made to you from any agencies of Government that have not been produced, fulfilled, for any particular reason?

Mr. KATZENBACH. The answer to that question is no, sir, but there may have been, on the most recent subpoenas, whether all the documents have been provided or not or whether there are still some negotiations going on on that, I do not know.

Senator KERRY. Well, we appreciate it.

Mr. KATZENBACH. But I do not want to withhold anything. I wish to goodness it did not cost as much as it does.

Senator KERRY. I want to thank you very much for coming. I know, Mr. Katzenbach, that the last thing in the world that anybody of good reputation and standing wanted to do was somehow subject themselves to the very question that you have been called to ask about BCCI. So we appreciate you doing it and we appreciate you coming here today to answer the questions and help wrap this up for us. At this point, we will insert documents pertaining to First American and BCCI's joint marketing, as well as answers by First American's former chairman and president, Mr. Clifford and Mr. Altman, to questions from the subcommittee, together with

documents pertaining to BCCI's and its attorney's handling of the committee subpoena in 1988.

[The information referred to follows:]

DICUSSION PAPERRELATIONSHIP WITH FIRST AMERICAN BANK

We are liaising closely with First American Bank in their marketing efforts in the Washington area. Already a number of accounts of individuals/corporations have been opened and a good beginning has been made on Embassy accounts (Brunei, Bangladesh, Guatemala, Pakistan, Panama). We hope to gear up this activity and make substantial progress in the coming months.

In addition next week we are jointly calling on thirteen embassies in Washington to get PL 480 business.

WORLD BANK/IMF AND OTHER AGENCIES

A great potential exists in this field and we are already working with the World Bank for Nigerian business and with C.C.C. under their GSM 102 program. Similar opportunities are available at the IMF, Interamerican Development Bank, US Aid (PL 480) and other agencies. Contacts have been made and various projects are being examined.

(1) World Bank
i.e. A/C
" Comm
Page

DEPOSIT GENERATION

All efforts are being made to mobilise deposits for other BCC offices and in some cases for First American Bank. During the last two weeks two amounts of US\$215,000.00 and US\$590,000.00 were placed in London.

(2) With
(3) US Aid
C.C.C.
2
PL 480
(4) Mult
Note

CONVERSION OF REPRESENTATIVE OFFICE TO AGENCY

Could only be beneficial over a longer term period. Initial studies show that over the short run an agency in Washington may not be viable and results could only be achieved over a period of two to three years. In this context our relationship with First American also has to be kept in perspective.

(5) First Am. Bank

OTHER POINTS

SUBLETTING HALF FLOOR.

~~INSTALLATION OF COMPUTER SYSTEM.~~



CALL REPORT

NAME OF ORGANIZATION:

Bureau for Private Enterprise
Office of Investment
Agency for International Development
Department of State
Pre/1 RM 3214
320 21st Street
Washington, D.C. 20523

(202) 647-9842

PARTICIPANTS:

Shawn P. Walsh
Director - Office of Investment

Omar Sadik
BCCI - New York

Richard E. Loth
Investment Advisor - Africa

Shahid Khan
BCCI - Washington D.C.

BACK GROUND:

The Bureau for Private Enterprise was established to design and implement innovative private enterprise projects in developing countries which would not only provide their own direct benefits to the country, but also serve as prototypes for projects to be initiated by the rest of A.I.D..

Within this framework the Bureau for Private Enterprise established the Private Sector Revolving Fund to fund projects within the following guidelines:

- Projects must have a demonstration effect (i.e. can be replicated by A.I.D. field missions, private financial institutions and others).
- Projects must be innovative and demonstrate financial viability.
- They must maximize development impact appropriate to the host country, particularly in employment and use of technology.
- Projects must be directed primarily to provide support and services not otherwise available to small business enterprise.
- They must be consistent with U.S. development assistance program and host country priorities.
- The Fund provides not more than \$3 million in A.I.D. funds per project and finance not more than 50% of the total cost; a substantial amount of the funding must be provided from private services within the project country.



- Commit no more than 20% of the funds assets to any one country.
- Charge interest rates at or near those otherwise available to the borrower.
- Loans generally range from 1 million to \$2.5 million.
- Loans Term ranges anywhere from 1 to 5 years. All repayments to A.I.D. must be in U.S. dollars.

LOAN STRUCTURE:

Two types of Loans are used within the Revolving Fund: loans made to LDC private intermediate financial institutions (IFIs) and loans made directly to private LDC business or to joint ventures between LDC and U.S. business.

The intermediate financial institution mode normally takes one of two forms. The first is a revolving fund loan made directly to the IFI which, in turn, matches the A.I.D. loan in local currency, forming a pool of funds for subsequent lending to local private enterprises.

The second form of revolving fund loan serves as collateral deposit to guarantee a portion of the risk of sub-loans made by the IFI with its own funds. In both cases the IFI provides all administrative support including sub-loan application review, approval, implementation and monitoring.

There is also a third area where the Fund places dollars with a U.S. bank who in turn issues a L.C./Guarantee for the same amount to the local bank or branch in the developing country who would then finance a particular project locally. In this transaction the IFI would not have any participation in the loan facility, but would be providing a guarantee to ensure that A.I.D. funds remain in dollars and the local loan is paid off in local currency.

BCC'S INVOLVEMENT:

In our meeting (which was a referral from a prior meeting set up by Ms. Louise Burto), Mr. Loth and Mr. Walsh were very enthusiastic about BCC and specifically with our global network in assisting their program and funding activities. Mr. Loth is an ex Citibanker who has had past exposure to BCC and felt very comfortable about working with BCC on a global level.

Mr. Loth outlined area's where we may develop a relationship as below:

- Issuance of Letters of Credit or guarantees in favour of our Local offices who in turn would provide local currency financing to small to medium size private sector companies that would be involved in projects under the previously mentioned guidelines. Credit evaluation and monitoring would be a function of our local office.

In this scenario BCC would not be participating in the facility and the guarantee would cover the whole amount of the facility extended



by our local office.

- Risk Participation - In this scenario the local A.I.D. office would identify the need for a particular type of project that should be implemented in the developing country. If the project is feasible and within the frame work of BCC policies, we may participate in funding the project jointly with A.I.D.. The A.I.D. funding may be as stated above (i.e. Guarantee) or a directed infusion of capital through our local office.

CONSIDERATIONS

EMP AND IMP RELATED

1. Development of a relationship with the U.S. Agency for International Development creating a direct link between the New York Agency and the largest U.S. government development assistance funding body.
2. Placements by A.I.D. with BCC New York, along with fees and commissions on guarantee business.
3. Introduction of new client relationships to our local offices. As the New York Agency would be issuing guarantees favoring companies at a local level we would also be able to market for the companies complete account relationship at the local level.
4. Development of a relationship between BCC offices and local A.I.D. offices based on our involvement with their programs.
5. Expansion of business for our local offices with limited exposure if we enter into risk participation with A.I.D.
6. Development of relationships with other U.S. government Agencies such as Overseas Private Investment Corp. and others.
7. A contribution to one of the precepts upon which BCC was founded "Service to humanity".

BUSINESS ACTUALIZATION

(CONFIDENTIAL)

In an effort to actualize the business potential and build a relationship between A.I.D. and BCC, we were able to identify a specific transaction. The Fund is currently negotiating a project in Mauritius along with the Overseas Private Investment Corp. and possibly the Commodity Credit Corporation. In this project there would be no funding requirement, and A.I.D. would place a deposit with BCC New York against which we would issue a guarantee to our local office to provide local currency financing. The company involved in the project locally is a "Blue Chip" name and Mr. Loth felt that we may even want to consider participation in taking up part of the credit exposure. A.I.D. has asked us to currently keep their participation confidential.



FOLLOW UP REQUIRED:

1. Advice from BCC Mauritius as to whether they are able to entertain the outlined proposal.
2. Direct Liaison with CSO on this specific deal and the possibility of extending these types of facilities in other countries in Africa.

Further follow-up in various areas of the world will be required as identified, based on how our relationship with A.I.D. evolves.

July 5, 1985 pg. 1

BCCI Washington Representative Office

MARKETING REPORT

The BCCI Representative Office in Washington, D.C. commenced operations in its new premises in late 1984 and we are pleased to submit this Marketing Report after the initial start up period.

The Representative Office consists of the Representative, one international officer and two local officers. This office also services the requirements of the special project group based here. In addition, protocol requests from other regions/branches are handled by us.

Keeping in view the purely supportive function of this Representative Office, we list below the progress made by us during the period under review.

1. WORLD BANK/IMF

We are continuing to expand our contact base in these organizations. The Nigerian Fertilizer Loan project is being coordinated by us and at the present time over US\$200 million worth of Letters of Credit have been opened.

Contracts are also being developed at both the operational and executive level at all the regional desks. In addition, efforts are continuing at different levels to get BCC approved to open World Bank accounts.

2. PAN AMERICAN HEALTH ORGANIZATION

This is a subsidiary of the World Health Organization headquartered in Washington and we have been able to obtain the account of their Colombian office for Banco Mercantil in Bogota. PAHO also has offices all over the Caribbean and we are coordinating with Caribbean Regional Office to get their accounts in Jamaica and Barbados, and also the possibility of starting a depository relationship for their excess funds in Miami.

3. U.S. GOVERNMENT AGENCIES

a) Considerable headway has been made with the Commodity Credit Corporation of the U.S. Department of Agriculture. Both the Latin America and Caribbean Region are now doing business with them and we are in touch with them constantly in this regard. We are also forwarding on a regular basis copies of their handouts to Central Marketing Division and Corporate branch in London in an effort to centralize CCC business.

b) PL 480 business is being reported under item (4) below.

c) A report has already been submitted to CSO regarding U.S. Export Credit Agencies and we are awaiting guidance on how to proceed in this matter.

4. FIRST AMERICAN BANK

All business that our own agencies in the U.S. are precluded from handling is being passed on to First American Bank, and also those contacts who desire local bank accounts. The accounts worth mentioning in this respect are the Ahmediyya Community Account with balances of around US\$1 million, Transview Travels Inc. with a monthly turnover of around \$100,000, Natalic Restaurant with a turnover of about \$35,000 per month and the Bangladesh Embassy who have placed a Term Deposit of over \$1 million with First American. We are also trying to obtain for them the account of Saar Foundation who opened an account in BCCI London with \$815,000 in addition to the \$1.6 million they already have on deposit with BCCI Los Angeles.

We also jointly visited 14 embassies in Washington with First American in an effort to obtain PL 480 business for them. The opening of L/Cs under PL 480 can only be handled by U.S. banks and our attempt was to pick up this lucrative business for First American Bank. Bangladesh business is already being routed through them because of this office and we feel that the outcome of our visits last month will be highly successful. A separate detailed report on this visit has already been submitted by Mr. Razaur Rahman of Central Marketing Division.

5. EMBASSIES


A program of calls on Embassies in Washington was initiated last year and we are continuing to meet with Ambassadors and Economic Councillors. As we have pointed out in the past, Ambassadors to the U.S. are usually persons of stature and importance in their own countries. Our attempt is to build up goodwill with the representatives of at least those countries where BCC operates, and feel that we have achieved satisfactory results in this regard.

In addition to the foregoing, it is our constant endeavour to establish relationships with all those persons and organizations who have a potential importance to us, and wherever possible to open accounts at BCC branches. It may be worth mentioning that we have placed over \$13 million in different U.K. branches for a single customer from Panama who is known to C.S.O. We anticipate at least \$5 million more in this account by the end of the year.

An exercise has been undertaken to prepare comprehensive lists of customers who would be interested in sending home remittances, and the first such list has been provided to New York office. We plan on expanding and updating those lists on a regular basis.

All protocol requests from other regions are handled by us and we have provided services to important customers, Central Bank and Government Officials and heads of international organizations.

Sani Ahmad
July 5, 1985



100 LEADENHALL STREET LONDON EC3A 3AD

DATE 24th July 1985

FROM Mr. Razaur Rahman,
Central Marketing Division.TO Mr. A. Shaik,
Central Marketing DivisionSUBJECT To report - Washington

As advised by you, I visited Washington from July 7 to July 16. This visit was mainly for meeting with embassies of 13 selected countries together with representatives of First American Bank, Washington, for the PL480 L/C business.

However, I took advantage of my visit and extended my activities during my stay there in the following fields:

a. Embassies of the selected 13 countries.

Together with Mr. Mayid Shawish, we called on 13 embassies for PL480 L/C's. All these countries together have a total allocation of US\$576 million under PL480 during current financial year ending September 30. From our discussion with concerned US Agencies, we understand that the allocation for next year starting October, will remain more or less on the same level.

From our meetings with some of the embassies, we feel that First American Bank will straight away receive some PL480 L/C's from this year's allocation (Liberia). Some of the embassies, however, were convinced about the advantages in dealing through FAB, but advised us to take up this matter with their authorities in the respective countries. The concerned embassy officials assured us that they will recommend FAB's case.

~~b. Meeting with World Bank officials dealing with loans for several countries with BCC presence.~~

During this short visit I managed to meet, in addition to the people I met earlier, four new officials in World Bank with whom my contact was only over telephone. These officials deal with World Bank loans for several countries where we have banking presence. On my enquiry, these officials mentioned to me that a substantial portion of these loans will be spent for imports of various pre-selected items. For certain loans they are following direct disbursement procedure either to the borrower country or to the suppliers and in some cases they are using Qualified Agreement to Reimburse (QAR). These officials were very happy to know that we are already handling L/C's under QAR system. They advised us that we should take up this matter with the borrower countries and convince them to follow QAR system, to which they are more favourably disposed. In some cases they have also given us the name of persons we should contact in the respective borrower countries.

I hope my contact with these additional officials will help me to develop contact with their other colleagues dealing with loans for other countries with BCCI presence.

MEMO

FROM: Mr. Kayid Shawish, International Division

TO: Mr. Barry Blank

DATE: August 16, 1985

RE: Business Call Report

Meeting Held with:

Dr. Ibrahim M. Oweiss
Professor at Georgetown University
Ambassador to U.S. for Commercial
and Economic Cooperation during
President Sadat

Mr. Donald O. Clark
Attorney
Bishop, Liberman, Cook, Purcell and
Reynolds
Washington, D.C.

Mr. Abdel Halim Ali
Minister, Economic and Commercial Affairs
Embassy of Egypt
Washington, D.C.

Mr. Refaat Butros
First Secretary, Commercial Affairs
Embassy of Egypt
Washington, D.C.

Participated by:

Mr. Barry Blank
Executive Vice President

Mr. Kayid Shawish
Vice President

Dr. Ibrahim Oweiss and Mr. Donald O. Clark were invited by Mr. Blank to lunch at First American Bank, in which I also attended. Mr. Clark, a lawyer, specializes in international law and contract negotiation. Dr. Oweiss is a professor at the Center for International Study at Georgetown University. He was appointed by President Anwar Sadat in the 1970's as Ambassador to head a special team to the U.S. to study and strengthen the Economic and Commercial relationships between the United States and Egypt. Dr. Oweiss also is a consultant for companies and foreign governments and specializes in Middle East oil producing countries and their investments. The purpose of this meeting was to explore the possibilities of utilizing Dr. Oweiss as a consultant for First American Bank. I have known Dr. Oweiss for several years. After lunch, we went to the Commercial Office at the Embassy of Egypt. Dr. Oweiss prearranged this meeting with Mr. Abdel Halim Ali, Minister and Mr. Refaat Butros, First Secretary.

At a previous call on July 9, 1985, with Mr. Razour Rahman of Bank of Credit and Commerce, London, I met Mr. Ali and Mr. Butros to discuss the CCC programs to Egypt. Mr. Ali repeated what he had mentioned at the July 9 meeting, that the decision to nominate banks for FL-480 letters of credit is made by the National Bank of Egypt (Mr. Ahmad Ismail, Director of Foreign Relations) and Banque of Misr (Mr. Ahmed Abdel Aziz, General Manager, Line of Credit Dept.). They are told by these banks in Cairo which bank in the United States they should open FL-480 letters of credit. At present, they use the following banks:

August 16, 1985

Page 2

- | | |
|-----------------------------------|--------------------------------|
| 1. Marine Midland | 5. Chase Manhattan |
| 2. Bankers Trust | 6. Morgan |
| 3. Bank of America | 7. Manufacturers Hanover Trust |
| 4. First National Bank of Chicago | |

I informed Mr. Ali that I am waiting for BCCI, London to inform us of the result of their contacts in Egypt, so that we may write to the National Bank of Egypt and Banque Misr. Mr. Ali agreed and advised that when First American Bank corresponds with the National Bank of Egypt and Banque Misr, we should send him copies so that he can add his recommendation. He also indicated that after we write we should visit the National Bank of Egypt and Banque Misr to strengthen our contacts in order to be nominated for next year, since this year's allocation has already been decided upon.

Mr. Blank indicated that we are also interested in the GSM-102 program. Mr. Ali indicated that the National Bank of Egypt and Banque Misr also do the nominations for GSM-102 program. Egypt received \$225 million dollars in 1984-1985 under PL-480 and \$150 million dollars under GSM-102.

In 1980, First American Bank was nominated to handle about \$17 million under PL-480 and more was to be coming, but when Egypt requested about \$780,000.00 in freight financing, First American Bank declined the request, thus resulting in end of our participation in the program.

BCCI, London is currently discussing charges and freight financing; they will advise me of their decision and the result of their contact in Egypt in order to write to the National Bank of Egypt and Banque Misr accordingly. Copies will be sent to Mr. Ali and a meeting will be arranged with him for more feedback. At that point, a trip to Egypt to visit with the National Bank of Egypt and Banque Misr need to be arranged. This trip will be beneficial, according to Mr. Ali, in order for First American Bank to be nominated to handle PL-480 and GSM-102 letters of credit, and possibly obtain some of the Embassy accounts from Riggs.

Continued from THE WALL STREET JOURNAL.
DUPLICATIONS NOT PERMITTED

ISSUE OF SEPTEMBER 6, 1985

High-Stakes Lobbying on Behalf of Other Nations Flows in Washington Around Aid, Trade Issues

by MONICA LANGLEY

of THE WALL STREET JOURNAL
TON — Even though House conferees were deliberating on authorization bill in a session of lobbyists, Denis Neill and Leslie Gray lobbying hard for their clients, Jordan and Morocco.

conference room, Mr. Neill, the Agency for International Trade was meeting with law firm staff as they emerged, changes in the bill to help his clients. At the other end of Pennsylvania, Mr. Janka, a former administration official, shuttled State and Defense department officials there to weigh in on the debate.

the conferees wrapped up the foreign-aid bill at 1:30 p.m. week before Congress began its recess. Messrs. Neill and Janka delighted that the legislators down a provision to prohibit Jordan until it negotiates a peace with Israel. They also were pleased the conferees didn't reduce aid because of its ties to Libya, which has received \$2.6 billion of funds to date.

for Countries Grows

High-stakes and finely orchestrated lobbying on behalf of countries is a wide range of issues including aid, military assistance and trade. Nations that used to be ambassadors making the dinner circuit increasingly are signing up this town's top lobbying firms. Many former high-ranking officials, and paying fees as much as \$600,000 a year, worry that the growing ranks of representing foreign governments are harmful. "By hiring the elite foreign governments can manipulate administration and Congress to their own national interests," says Lisker, former chief of the department's foreign-agents unit. "It's our national security," he says, "our economic health, with trade imbalance as the best ex-

rapid rise in the numbers of lobbyists, some members of Congress have called for greater disclosure to the public on their activities. Other lawmakers have asked the U.S. attorney gen-

eral to investigate some lobbyists' actions on behalf of foreign interests.

Lobbying and law firms predictably are taking advantage of this swelling eagerness by foreign governments and corporations to retain Washington representation. Gray & Co., for example, a big lobbying and public-relations firm here, set up a

separate lobbying unit catering to foreign government clients.

About 850 lobbying firms are registered now with the Justice Department, representing "thousands" of individual lobbyists, according to Mr. Lisker. This number has risen steadily in the past four years, he adds. And more often, high-ranking offi-

Top Foreign Country Lobbyists

Here are some foreign nations and the Washington lobbyists they employ:

BAHAMAS

Black, Manafort Stone & Kelly
(Top GOP political consultants Charles Black, Paul Manafort, Roger Stone and Lee Atwater)
Hogan & Hartson
(William Fulbright, former Senate Foreign Relations Committee chairman)

BRAZIL

Arnold & Porter
(Robert Herzstein, former undersecretary of commerce; William Rogers, former undersecretary of state; John Hawks, former general counsel to the Federal Reserve Board)
Colby, Bailey, Werner & Associates
(William Colby, former CIA director; Lester Wolff, former representative from New York.)

CAMEROON

Van Klobberg & Associates
(Tabarak Husain, former ambassador to the U.S. from Bangladesh; Nicholas Kittie, former counsel to the U.S. Judiciary Committee)

CANADA

Arnold & Porter
CAYMAN ISLANDS
Gray & Co.
(Robert Gray, former chairman of President Reagan's inaugural committee; Frank Mankiewicz, former aide to George McGovern)

CHILE

Arnold & Porter

CHINA

Akin, Gump, Strauss, Hauer & Feld
(Former Democratic Party Chairman Robert Strauss; Vernon Jordan, former president of the National Urban League)

Surrey & Morae

(Walter Surrey, former U.S. negotiator on bilateral agreements)

CYPRUS

Manatt, Phelps, Rothenberg, Tunney & Evans
(Charles Manatt, former Democratic National Committee chairman; Thomas Evans, former representative from Delaware)

ECUADOR

O'Connor & Hannan
(Former Democratic Party treasurer Patrick O'Connor; former Treasury Department lobbyist Thomas Quinn; former Sen. Edward Brooke of Massachusetts)

EGYPT

Neill & Co.
(Denis Neill, former assistant administrator for legislative affairs for President Ford; Leslie Janka, former aide to ambassador to the U.S. for El Salvador)

HAITI

Gray & Co.

IRAQ

Van Klobberg & Associates

ISRAEL

Arnold & Porter

NICARAGUA

Reichler & Appelbaum

ROMANIA

Van Klobberg & Associates

SAUDI ARABIA

Paul J. Manafort

Gray & Co.

SINGAPORE

Colby, Bailey, Werner & Associates

SOUTH AFRICA

Smathers, Hickey & Riley

(Former Sen. George Smathers of Florida)

John P. Sears

(Former Reagan campaign manager)

SOUTH KOREA

Gray & Co.

TAIWAN

Richard Stone

(Former U.S. Senator from Florida)

THAILAND

Colby, Bailey, Werner & Associates

TURKEY

Gray & Co.

VENEZUELA

Arnold & Porter

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U.S. News & World Report Sept 6, 1988

cials are leaving government and lobbying for foreign interests.

William Colby came out of the Central Intelligence Agency and started representing Singapore, Thailand and Brazil. Reagan campaign operatives Charles Black, Paul Manafort and Roger Stone have signed up Saudi Arabia, Peru, Portugal, the Bahamas, St. Lucia and the Dominican Republic. Stanton Anderson was a deputy assistant secretary of state until he left to start his own firm, now representing Japanese and Brazilian interests. Richard Stone, former U.S. senator from Florida, now lobbies for Taiwan. And William Fulbright, former chairman of the Senate Foreign Relations Committee, has advised Saudi Arabia and the United Arab Emirates.

And the pay is typically higher from these foreign governments than from domestic clients, lobbyists acknowledge. Neill & Co. receives \$360,000 from Egypt, \$300,000 from Morocco and \$260,000 from Jordan, as annual retainers. South Africa pays \$500,000 a year to John P. Sears, former Reagan campaign director, and \$300,000 to the law firm headed by former Sen. George Smathers. Gray & Co. just renegotiated its contract with Turkey, doubling the fee it receives, to \$600,000 a year.

"Foreign countries tend to pay bigger fees to lobbyists, because they are more susceptible to big names and past titles,"

says Thomas Quinn, a Washington lobbyist.

Congress Bewilders Them

Lobbyists say foreign governments generally hire them for help before Congress, because they find it bewildering to accommodate so many members with so varied interests to protect. "Foreign countries think they can handle the State Department, but Congress, on the other hand, is often frustrating to them because one congressman can stop everything," says Joseph Blatchford, former director of the Peace Corps and Commerce Department official, now with the O'Connor & Hannon law firm here.

As foreign-country business heats up, lobbying firms are establishing areas of the world in which they claim to be expert. Neill & Co., for instance, is establishing itself as expert in the Middle East. Edward van Kloberg of Van Kloberg & Associates says his firm "specializes in developing countries and Eastern European countries." His group represents Romania, Iraq and Cameroon.

Yet, some lobbyists refuse to represent countries they fear would hurt their credibility. "We have turned down Libya several times," says Niels Holch, a Gray & Co. vice president. "And we also refused to represent the Nicaraguan freedom fighters." Gray & Co. does represent South

Korea, the Cayman Islands, Haiti, Morocco, Saudi Arabia and Turkey.

A group of 14 congressmen recently called on Attorney General Edwin Meese to investigate the foreign-agent disclosures made by the Washington law firm representing Nicaragua. In a letter, the lawmakers asserted that the firm, Reichler & Appelbaum, "may have falsified their recent activities report" by failing to disclose that they "initiated, facilitated and assisted in the production and dissemination" of two reports alleging human-rights violations by Nicaragua's anti-government resistance forces.

Paul Reichler says his firm isn't required to report that it initiated and helped carry out the reports; disclosure is required only if he disseminated the reports, and he didn't, he says. The letter to the attorney general "is obviously a political statement for 14 apologists for the Contras," he asserts.

While representing foreign governments is generally very profitable, there can be surprises, as Mr. Blatchford, the former Commerce Department official, found. Hired by then-President Nimein of the Sudan, he lost the lobbying contract abruptly when a military coup occurred early this summer. "My clients don't drop me; they get overthrown," quips Mr. Blatchford. "The next foreign country that retains me, I'm going to ask for the fee upfront."

578 STREET, N.W. WASHINGTON DC 20006

DATE September 20, 1985

FROM Dragoslav Avramovic *DAW*

TO Mr. Sani Ahmad

SUBJECT: Visit to Barbados--Back to Office Report

At the invitation of the Caribbean Development Bank, I spent the period from 5 to 17 September, 1985 in Barbados to advise the Bank on the proposal to establish a Caribbean Trade Credit Facility. The proposal was initially made by the Caribbean Development Bank in February, 1985, was subsequently endorsed by the Trade and Finance officials of the Caribbean governments meeting in the framework of the Caribbean Community (CARICOM), and supported in principle at the meeting of the heads of the Caribbean governments in June, 1985. These latter (the heads of government) asked the Bank and the CARICOM Secretariat to elaborate on the concept, purposes, and modalities of the Facility and submit the proposal to the Caribbean governments by the end of 1985.

The need for the new Facility arises on two grounds: (a) to help revive trade within CARICOM, now in difficulty because of the suspension of functions of the Caribbean Multilateral Clearing Facility, and (b) to support Caribbean exports of non-traditional goods to the extraregional markets.

What is envisaged is a new institution, attached to the Caribbean Development Bank, which would provide export credits to exporters both within and outside the Caribbean, mostly on short-term but also some on medium-term. The Bank and the officials hope that it will be possible to attract funds from the FEC, U.S., and Japan, as well as from the Inter-American Development Bank in the form of loans, while the Caribbean governments, the Caribbean Development Bank, and private banks, domestic and foreign, would provide equity capital. The initial payment by the governments would be in local currencies, with a commitment to convert them into foreign exchange over a period of, say, five years.

The Caribbean Multilateral Clearing Facility was suspended in 1983 when accumulated deficits, incurred mostly by Guyana, reached the statutory limit of US\$100,000,000, most of it owed to Barbados and Trinidad and Tobago. The intra-CARICOM trade has fallen since then by one-fourth, partly because of the suspension and partly because of the decline in income and trade obstacles within the region. I advised the Bank and the officials that the establishment of a new Trade Credit Facility would very quickly encounter a similar problem unless it was based on different principles: it would have to operate transaction by transaction, rather than on open account, and it would have to resort to compensable trade within and outside the region. This would enable the new Facility to be in reasonable balance and thus help sustain the revival of trade. As the Caribbean is a small region, part of

Mr. Sami Al-Jad

September 20, 1985

Page Two

the goods would have to be sold on the world market, and I suggested that they may wish to cooperate for this purpose with a worldwide institution such as the proposed Third World Bank.

The capital of the Facility is provisionally envisaged at US\$15,000,000 equivalent, of which US\$10,000,000 would be paid by the Caribbean governments, US\$3,000,000 by the Caribbean Development Bank, and US\$2,000,000 by private banks. It is possible that there will be a management contract between the Trade Credit Facility and the Caribbean Development Bank for an initial period of perhaps five years. The total amount of borrowing is envisaged at US\$60,000,000, of which US\$35,000,000 would be from official sources, and US\$25,000,000 from the capital and money markets, the latter after the Facility has acquired some experience.

I participated in two discussions of the officials, one on 6 September and the other on 16 September. A representative of the Inter-American Development Bank was present at the first discussion and indicated that the IADB may be prepared to lend US\$5,000,000 on soft terms to the Facility.

The President of the Caribbean Development Bank and the officials seemed fairly optimistic as to the prospects for mobilizing resources from developed country governments, such as Canada, the EEC, U.S. and Japan.

With respect to private sector participation, the idea is to bring about close cooperation of the public and private sectors in the implementation of transactions as well as to mobilize additional resources.

I believe that there is a need for a new Facility in view of the present stalemate in the region.

In the discussion of 16 September, a considerable advance was made in showing the need for compensable trade but some of the officials are skeptical as to whether both the support to extraregional exports for convertible currencies and to compensable trade can be handled through a single institution. I am sure that this issue will preoccupy the officials and the governments over the next several months.

At your suggestion, I advised Mr. Demas, the President of the Caribbean Development Bank, of the desire of BCCI to expand relations with the Bank, including an increase in their deposits held at BCCI. Mr. Demas had nice things to say about the activities of BCCI in the Caribbean.

Mr. Jawaid, Manager of the BCCI Branch in Barbados, had expressed a wish to discuss BCCI relations with the Caribbean Development Bank and I suggested to Mr. Demas that he might find it useful to receive him. Mr. Demas indicated that he would be getting in touch with Mr. Jawaid.

One of the effects of the establishment of the Caribbean Trade Credit Facility would be to make unlikely the establishment of the proposed ACP Bank (Asian, Caribbean and Pacific states) within the Lome Convention.

Marketing Report for the period ending September 30, 1985

We are pleased to present below a report of the marketing activities carried out by the Washington D.C. Representative Office during the period July 1 to September 30, 1985.

1. WORLD BANK/IMF

Existing contacts with the World Bank/ IMF are being maintained and new ones being developed. Our efforts to place BCCI on the list of banks authorized to accept World Bank's funds continue and in this connection they have decided to set up a panel headed by their Director of Investments to meet with our representatives. A decision would be made after this meeting and we have requested C.S.O. to nominate suitable representatives from London to take part in these discussions. In addition relevant classified information regarding the World Bank's approval procedure has been forwarded to C.S.O.

The Nigerian Fertilizer Loan project is being satisfactorily handled.

High-level contacts have been established at the IMF. In addition to other top officials we have good rapport with Mr. A.S. Jayawardena, Alternate Executive Director for the group of Bangladesh, Bhutan, India and Sri Lanka. Mr. Jayawardena's term expires at the end of this year and in case he does not get an extension we anticipate he will return to Sri Lanka in an important position, possibly as Governor of the Central Bank.

2. U.S. GOVERNMENT AGENCIES

We are continuing to build up relationships with various U.S. Government Agencies, primarily with U.S. AID, EXIMBANK, the Commodity Credit Corporation, the U.S. Department of Agriculture and others. Liaison is being maintained with the Commodity Credit Corporation in respect of existing and new business with our Latin America and Caribbean regions, and with EXIMBANK for our New York Agency.

3. FIRST AMERICAN BANK

Through the efforts of this office a number of personal accounts have been opened at different branches of First American Bank, and we are working jointly with them to obtain the local account of Saar Foundation for FAB Maryland. We understand that this would be a substantial account. This Foundation already banks with BCCI in London and Los Angeles.

A joint program of calls on Embassies is also underway and we are now working with their Asset Management Group who have provided us with a number of top multinational contacts such as Westinghouse and Northrop Corporation. We have just passed on an attractive deal to London concerning supply of equipment worth \$41 million by Westinghouse and are awaiting the outcome of their

Dr. Avramovic and BCC London and are examining the possibilities of offering an international business package to Northrop.

4. OTHER BUSINESS

Courtesy calls have been made on Ambassadors of various European, South American and Middle Eastern countries. In addition we have called on senior officials of the U.S. Government, Banks and autonomous agencies.

Functions honouring the Dubai Trade Delegation which visited the U.S. recently have been attended and members of the delegation were introduced to the Manager of our New York Agency.

A further deposit of US\$1.8 million has been received from a customer in Panama and placed in London.

During his visits abroad Dr. Avramovic is also marketing on behalf of BCC and a copy of his reports on his recent visits to the Caribbean Development Bank, the Central Bank of Barbados, and the meeting of the Institute of International Finance in Seoul are enclosed. The last meeting was attended by Dr. Avramovic at the behest of Mr. Kemal Shoaib.

Sani Ahmed
October 11, 1985

AA/ras



DATE November 7, 1985

FROM: Ameer H. Siddiki

TO: Mr. Sani Ahmed,
BCC WashingtonSUBJECT: Master Plan

I reproduce text of a message sent to our operating units in Americas. Your office is to play a very important part in implementation of this plan. You will be as much a part of the support as the support centre itself. Could you kindly discuss this amongst yourselves and send to me your suggestions as soon as possible.

"As I leave again for ten days I carry with me the meetings of Americas, the very invigorating and for me personally very educative. The new dynamics which crystallised out of the discussions strengthen the confidence and made us see vividly an extremely brilliant future and a flag ship role.

In the meetings a master plan was also discussed, a short term one for 1986 and a long term one. Before you get involved in something else, I request you that in this week-end or shortly thereafter please, start drawing this plan. Start assessing the quality and power of your dynamics and draw a plan from that. This will make us change our approach.

The plan should be drawn by you for the whole of Americas which should always remain for you and for me just one region. Your unit maybe covered in a sub-plan. Please do make 'how' a vital part of the plan.

I hope that you will send these plans to me by Monday, November 18 the support centre would then make out one plan, discuss with you within a week thereafter and give it a final shape by the end of the month. December will then exclusively be devoted for preparing and launch the plan with full thrust on Wednesday, January 1.

Many thanks, many regards."

With best wishes and regards,

Dictated by Mr. Ameer Siddiki and signed in his absence.

BANK OF CREDIT AND COMMERCE INTERNATIONAL
SOCIETE ANONYME
REPRESENTATIVE OFFICE
1667 K STREET, NW, WASHINGTON, DC 20006

April 8, 1986

Mr. Carl J. Blase
Treasurer & Chief Financial Officer
DeLeuw Cather & Co.
1211 Connecticut Avenue, N.W.
Suite 602
Washington, D.C. 20036

Dear Mr. Blase,

It was a pleasure to meet you again yesterday at First American Bank.

I am enclosing our 1984 balance sheet (the 1985 annual statements are under print and will be at hand shortly) and also a brochure describing the activities of our Bank.

As we have branches/affiliates in several countries where you operate, and with our special relationship with First American Bank, I feel we are uniquely placed to offer you our best services.

I will be pleased to discuss the matter further if you so desire.

With best regards,

Yours sincerely,

Amjad Awan
Representative

Encl:
AA:ahk

BUSINESS CALL MEMORANDUM

DATE: April 18, 1986 LAST VISIT: N/A

NAME: Embassy of People's Republic of China TEL: 328-2509

ADDRESS: 2300 Connecticut Avenue, N.W.
Washington, D.C. TELEX:

OFFICERS CONTACTED: Mr. Li Hongkui, First Secretary
Mr. Wei, First Secretary

BCC OFFICERS ATTENDING: Amjad Awan, Washington, D.C.
Shahid Khan, Washington, D.C.

The purpose of the meeting was to introduce First American Bank to the Chinese Embassy to try and obtain their account. Mr. Barry Blank and Ms. Maureen McDonald from First American attended the meeting.

The Chinese Embassy is one of the larger diplomatic missions in Washington and has approximately 250 employees. The different sections in the Embassy, i.e. political, military, education etc., maintain separate accounts.

This meeting was with officers of the political section and was arranged by Mr. Yang Jae Chi who is the Ambassador's aide. The political section maintains both current and fixed deposit accounts.

Mr. Li informed us that the Embassy currently uses American Security Bank in the D.C. area, and that American Security provides the facility of a Chinese-speaking officer for them to deal with. Mr. Blank informed Mr. Li that First American is currently interviewing candidates with Chinese-speaking abilities and realized that this was an important part of the service to be provided. Literature was presented and Mr. Li will contact First American in the near future. He also offered to introduce Mr. Blank to the education section which maintains a fairly large account.

Follow-up is primarily First American's responsibility and they have invited Mr. Li and Mr. Wei to visit their offices for further talks.

BCCI Washington remains in contact with First American to provide further assistance if required.

BANK OF CREDIT AND COMMERCE INTERNATIONAL
SOCIETE ANONYME
REPRESENTATIVE OFFICE
 1667 K STREET, NW, WASHINGTON, DC 20006

FILE: PRC

AA/FYI

SU

April 21, 1986

Mr. Li Hongkui
 First Secretary
 Embassy of the People's
 Republic of China
 2300 Connecticut Ave., N.W.
 Washington, D.C. 20008

Dear Mr. Li:

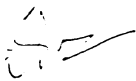
My sincere thanks to you and your colleague Mr. Wei for giving us the opportunity to introduce our friends from First American Bank in Washington, D.C.

I am hopeful that this initial meeting and exchange of information will lead to the development of a mutually beneficial relationship between the Embassy and First American.

Because of our close relationship with First American, I am sure that the two banks can provide a full range of domestic and international banking services that will cover all your requirements.

We look forward to working with you and Mr. Wei to develop this relationship and would be happy to provide any further information that you may require. Please do not hesitate to call.

Yours very truly,



Shahid Khan

cc: Mr. Barry Blank
 Ms. Maureen McDonald
 Mr. Yang Jae Chi

SK:ahk



BANK OF CREDIT AND COMMERCE INTERNATIONAL
SOCIETE ANONYME
REPRESENTATIVE OFFICE
 1667 K STREET, NW WASHINGTON DC 20006

FILE

May 19, 1986

Ms. Maureen McDonald
 First American Bank N.A.
 740 15th Street, N.W.
 Washington, D.C. 20005

Dear Ms. McDonald:

Reference our effort to obtain the Chinese Embassy account in Washington, D.C., I had the occasion to meet with Mr. Yang Jae Chi this weekend. He had helped to arrange our meeting at the Embassy last month.

I informed him of First American's continued interest and your attempt to employ a Chinese-speaking officer to handle their account. He responded that he did not foresee any difficulty in obtaining the account should you be successful in your hiring effort.

I thought it might be useful to pass on this information. Please advise if I can be of any further assistance.

Yours sincerely,

Shahid Khan

SA:ahk;



TELEX 892354 FSTAMERICA
 248427 FSTAM UR
 197638 1STAM UT
 CABLE
 ADDRESS FSTAMERICA

May 27, 1986

Mr. Mario Vázquez Raña
 President and General Director
 Guillermo Prieto No. 7
 Colonia San Rafael
 Mexico, D.F. 06470

Dear Mr. Vasquez Raña:

It was a pleasure to see you and Mrs. García again and to see your offices in Mexico City. Further, I was pleased that you had the opportunity to meet Miss Maureen McDonald from our International Department where she manages diplomatic and personal banking relationships, and Mr. Akbar Bilgrami from the BCCI Miami Office who has extensive experience working in Latin America.

It is encouraging to learn that your organization is sole contender to purchase UPI, a fact confirmed further in an article in the Washington Post while we were away.

As we indicated, First American would like to work with you and UPI in a number of different service areas, including cash management, credit accommodations, investment management, and personal banking for you and your key executives. In each, we believe our bank offers unique capabilities with a level of attention superior to our competitors. Comments follow on those services on which we would like to present specific proposals.

1. Cash Management

- a) Concentration of Cash from abroad into international concentration accounts and eventually to First American Bank in Washington assisted by BCCI's international network of offices. In this regard, Mr. Bilgrami, Mr. Awan in the Washington office of BCCI, and their colleagues world wide will work closely with us.
- b) Lockbox
- c) Controlled Disbursement
- d) Account Reconciliation
- e) Direct Deposit of Payroll
- f) Overnight Investments - sweep arrangement

2. Credit

- a) Revolving lines of credit for working capital
- b) Equipment loans or lease facilities
- c) Loans for other purposes
- d) Letter of credit facilities



Mr. Vasquez Rana
Page 2

It is my understanding that you are planning financing of \$14.0 million more or less for computer equipment secured by cash collateral. We have a solid reputation for competitive pricing which I believe you will find attractive.

3. Investment Management

Our Asset Management Department can assist in the following areas:

- a) Managing the fund for unsecured creditors in accordance with the bankruptcy court's ruling.
- b) Managing and administering the pension fund for the benefit of non-union employees.
- c) Administering an ESOP for all employees to be funded with Class B common stock.
- d) Serving as stock transfer agent for Class B common stock.

I would like to point out the department's investment performance statistics rank it in the top 3% of the United States. Please see graphs attached.

4. Personal banking

We offer all types of personal service including credit assistance for executive relocation.

Of major importance, the entire relationship of UPI will be under the supervision of Mrs. Schmidt, Vice President who has considerable experience with companies engaged in communications and publishing. Miss McDonald will handle your personal account requirements. In addition, you have ready and on-going access to the senior management of the bank.

At this point, we stand ready to respond to specific requirements and will look forward to your response.

Sincerely,

Barry W. Blank

MM/jzk

MEMORANDUM

FROM Mr. Akbar Bilgrami TO Mr. S.M. Shafi
 LOCATION BCCI-LAR-Miami LOCATION BCCI-LAR-Miami
 DATE August 8, 1986
 REF MKT/ 6154
 SUBJECT Mr. Mario Vazquez Raña-United Press International

The above gentleman, as you are aware, was identified by Mr. Awan and subsequently at his request I met the same in Mexico City to pursue the possibility on personal banking. As follow up to the meetings Mr. Awan arranged another meeting in Washington with the undersigned and Dr. Calvo (who already knew Mr. Vazquez before) to finalize personal banking arrangements for Mr. Vazquez and opening of accounts of UPI with BCC branches.

Following major points were discussed:

1. Opening of UPI accounts in countries where BCCI and UPI have offices (25 countries)
2. BCC TC's to be nominated as official TCs for tenth Pan American games
3. Personal Deposits

Mr. Vazquez Raña instructed Treasurer of UPI to immediately open bank accounts with us. In this connection, Mr. Ameer Siddiki has nominated one officer in London to liaise with Mr. Awan in this aspect.

Mr. Vazquez agreed to support our bid to be official TC Vendor and in this connection we spoke to Mr. Ameer Siddiki who suggested that the matter be taken up by Travellers Cheques Division with Visa, who are also bidding to be also sponsor for the games.

As regards to personal deposits there is a maturity of US\$ 22 M in mid-October and Mr. Vazquez Raña has agreed to consider placing with us a considerable part of this deposit on maturity. It is worthwhile to note that Mr. Vazquez had complained about the pettyness of some American Banks with reference to charges on checkbooks, etc... In this connection, Mr. Awan's suggestion of providing a BCC Gold Card (free of costs) and a BCC desk watch was conveyed to Mr. Siddiki who kindly agreed to send the same to Mr. Awan to be delivered to Mr. Vazquez next week alongwith the account opening forms for an account to be opened at BCC Miami and/or Nassau.

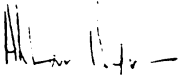
.../...



Mr. S.M. Shafi
Page 2
MKT/ 6154

We had agreed with Mr. Vazquez to meet with him at the soonest.
and once we have received all account opening forms and other
information, we shall meet with him at the end of next week to
finalyze the matter.

Best regards.


Akbar Bilgrami

cc: Mr. Ameer Siddiqui
Mr. Amjad Awan



BANK OF CREDIT AND COMMERCE INTERNATIONAL
SOCIETE ANONYME
REPRESENTATIVE OFFICE
1667 K STREET, NW, WASHINGTON, DC 20006

September 10, 1986

Mr. Edward J. van Kloborg, III
President
van Kloborg & Associates, Ltd.
Suite 1000
1100 - 17th Street, N.W.
Washington, D.C. 20036

Dear Mr. van Kloborg:

Thank you for the information you sent me concerning your firm. I would be delighted to have lunch with you at your convenience.

With best regards,

Shahid Khan

Encl;

20217

26 September 1986

Amjad -

Per your request, here is a copy of the proposal delivered to Mr. Bursat in July. As you will see it follows the lines we discussed at a various meetings in the past.

Since we delivered the proposal ~~we~~ we have had virtually no contact with the company on a face-to-face basis until this week. For example, I delivered a package of signature cards and contracts to Mr. Vasquez Rana a couple of weeks ago, at your suggestion, but heard nothing from his office until Monday of this week.

At this time he is prepared to proceed with us and Maurice and I are eager to continue working with you to deliver the services outlined in the proposal.

~~However~~ UPR has chosen to use very simple domestic cash management arrangements at this time and I believe that they will request a similar set up on the international side.

I will be going on vacation next week and will return the 20/12

In my absence I hope that you
and Maurer will be able to meet
and resolve any problematic
requests that UPI might have.
Please call me if you have any
questions.

— Sus —



Susan P. Schmidt
Vice President
(202) 637-6236

July 23, 1986

Mr. Michael A. Burset, General Manager
United Press International, Inc.
1400 I Street, N.W.
Washington, D.C. 20005

Dear Mike:

Please find enclosed a proposal for United Press International's international and domestic cash management business. In this proposal we have tried to give you an idea of what we could do for your company and have made some recommendations regarding procedures and mechanics which appear to make sense.

Since there are still a number of issues to be resolved this proposal is designed to be a discussion document which we can refine to suit your needs more specifically as we learn more about your requirements. Therefore, we would like to schedule a meeting with you on Friday to review with you your questions and comments. At that time we will be able to give you more guidance and respond to your concerns.

Sincerely,

A handwritten signature in cursive script, appearing to read "Susan".

Susan P. Schmidt

SPS/aan

Enclosure



UNITED PRESS INTERNATIONAL

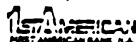
JULY 1986

EXECUTIVE SUMMARY

First American Bank is committed and capable of providing cost effective cash management services that will be customized to meet your specific needs. The objectives of the cash management program will be:

1. To maximize convenience
2. To provide for the efficient concentration of funds
3. To reduce or eliminate many of the administrative problems now faced by the company
4. To provide a high level of personal service here and around the world

This proposal addresses specific areas where First American Bank offers alternatives and enhancements to UPI's current cash management arrangement. First American Bank believes that through active discussion with UPI we can arrive at the best possible and most comprehensive cash management program. This program will focus on domestic and international collections, concentration, investments, and disbursements.



INTERNATIONAL CASH MANAGEMENT

First American Bank, N.A., in cooperation with its affiliate Bank of Credit and Commerce International (BCCI) and its extensive international correspondent bank network, is prepared to establish an international cash management program to meet your company's needs.

I. Establishing Banking Relationships

The first step we recommend is that UPI establish banking relationships with BCCI in the locations where they have full service branches corresponding with your bureau locations, and that UPI establish the remaining banking relationships with our correspondent banks in countries where UPI is not already doing business with our correspondent. Attached is a list of UPI bureau locations where you maintain banking relationships and the locations where BCCI maintains branch locations (Exhibit 1). In establishing these accounts First American Bank, N.A. would assist you in the following areas:

1. The choice of a convenient and well-established banking institution. We would review your locations and the locations of our affiliate or correspondent to help you find a bank that is easily accessed. We would also guide you to financially sound institutions with established reputations and the ability to perform well.
2. The mechanics of opening the accounts. We could notify the BCCI locations where you wish to open accounts by telex and have the accounts opened very quickly. We would then have signature cards forwarded to the local bureau and yourselves, as you requested. Our goal would be to ensure that the appropriate signers are registered on the accounts. We would also arrange for statements to be sent to the location that you request on a monthly basis.
3. The deciphering of local regulations regarding foreign exchange and transfers. Through the extensive worldwide network of BCCI, we would assist you when possible to release restricted funds. We may also advise you on exchange controls and regulations.

II. Cash Concentration

Although we could retain the current structure which allows for cash to be concentrated in three geographic areas, we recommend that UPI reduce to two the number of locations where cash is concentrated outside of the United States. We recommend retaining the cash concentration accounts in London and Hong Kong, at least initially, and concentrating the Latin American funds in Washington. Funds may be transferred to your Latin American bureaus directly from the Washington concentration account (Exhibit 2).



Within this arrangement, we would propose to provide you on a daily or weekly basis with a telexed report of the balances and account activity in Hong Kong and London. From these daily or weekly reports, your Financial Manager could make a decision whether to request transfers to or from the concentration accounts. He could notify First American Bank to effect the transfer or to notify BCCI - Hong Kong or BCCI - London to remit the funds to the Washington concentration account. Alternatively, BCCI - Hong Kong and BCCI - London could have standing instructions to remit any funds over a certain targeted balance back to the main concentration account in Washington.

Since you maintain concentration accounts in Hong Kong and London, we would recommend that flows of information as well as flows of funds be routed through these concentration accounts. Transfers may be effected more quickly from these locations, principally due to the difference in time zones between Washington and the bureau locations.

If UPI wanted to eliminate the Hong Kong and London concentration accounts, however, and route all transfers directly through Washington, we would be able to assist you in arranging this system. At the present time, we recommend that you continue using the concentration accounts to allow for less disruption.

We would recommend that the balances in the non-concentration accounts be pared down where possible. For example, at ANZ Bank in Australia, the UPI office is maintaining balances over U.S.\$100,000. In the locations where there are restrictions on transfers of funds, we would recommend that UPI try to match the income in local currency with the expenditures in the local currency. For example, in Rumania where exchange controls are very strict, UPI could negotiate to receive only enough Rumanian leas to cover the bureau's expenditures and the remainder of funds would be in convertible currency.

We have noted above that information will be routed via telex. In the case of London and Hong Kong where we would expect daily messages, information and transfers would be routed via S.W.I.F.T. which is a less expensive message system. If you would like, balance information for Hong Kong and London could be reported through the same balance reporting system as UPI's domestic accounts. More information about balance reporting follows in the domestic cash management services section.



DOMESTIC CASH MANAGEMENT SERVICES

First American Bank offers comprehensive cash management services to more efficiently monitor and control domestic cash flow and integrate international transactions as well. This integration of information will be of extreme importance to UPI as it begins to better coordinate its worldwide flow of funds.

The services outlined offer alternatives for domestic collections of receivables, concentration and investment of cash, and disbursement of all payables. These services allow for concentration and centralization of UPI's banking under one roof and eliminates the need for multiple banks in various U.S. cities (Exhibit 3). Bank officers are close at hand, ready to respond, and can keep UPI informed of regulatory or technological changes that may effect UPI's overall operation.

I. Domestic Collections

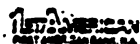
First American Bank recognizes the need for UPI to utilize a receivables collection system for the \$7 million collected each month. We recommend that a lockbox system be established for the collection of the 3,000 domestic receivables through a Washington, D.C. post office box and possibly, a second collection site through a correspondent bank in a city where a concentration of receivables exists. A comprehensive review of UPI's receivables is suggested to assess the feasibility of such an arrangement.

The lockbox collection system may be processed manually, as is currently being done, or via automated processing. Automated lockbox processing would provide additional detail of all invoices received and eliminate the need for UPI to keypunch this information into its internal system.

A further enhancement to your collection system would be to expand the use of electronic drafting of large receivable accounts via the Automated Clearing House. This ensures efficient crediting of the receivables and reduces processing costs. Information may be conveniently exchanged from your Reston, Virginia processing site to our Reston Operations Center located on Campus Commons Drive. Both the lockbox arrangement and the electronic drafting of your clients' accounts would offer increased availability of your daily deposits and allow for timely concentration of your funds into one central account at First American Bank.

II. Concentration of Funds and Reporting

Information regarding UPI's current account balance and detailed transaction reporting may be automatically transmitted to UPI's office each morning. This would provide an accurate and up-to-date accounting of UPI's current cash position.



Each morning your Financial Manager may access a ledger and collected balance, as well as any other information that UPI deems important in managing the flow of cash through the concentration account. The information is available through a terminal and may be accessed at your own convenience using a format that will be customized to meet your needs.

Information regarding UPI's balances in the Hong Kong and London accounts could also be transmitted to the Washington office. This could be done on a regular basis to serve as an update of UPI's cash position both internationally, at the regional concentration banks, and domestically. This could be done on a daily or weekly basis depending on UPI's desire for this information. The Washington office would then be able to monitor the international cash position of UPI and make financial decisions based on this current information.

Once the balance position has been obtained, the Financial Manager will decide whether to invest the excess cash. If an investment is to be initiated, the Financial Manager may contact First American Bank's Investment Services Center to obtain current and competitive rate information. Instructions for investment may be given at this time and the transaction completed.

An automatic overnight investment arrangement is also available for investment of excess funds in the concentration account. First American Bank's Target Balance Account allows for idle account balances to be automatically invested daily without the Financial Manager's involvement into specified short-term investments. After daily activity on the concentration account is analyzed, all funds in excess of the target and in-clearing balances are automatically swept into overnight investments - Repurchase Agreements and Eurodollar Deposits.



III. Investments

First American Bank offers a wide range of investment alternatives for overnight or short-term investments. These include repurchase agreements, Eurodollar currency deposits, certificates of deposit, commercial paper and Treasury securities. A description of each investment vehicle follows.

Repurchase Agreement

A repurchase agreement, which requires a minimum investment of \$100,000, is created when the bank sells a U.S. Treasury or agency security from its investment portfolio to a client with an agreement to buy the security back at a later date at a specified rate. With an open-end repurchase agreement, the amount of the repurchase agreement and the rate are adjusted on a daily basis. Confirmation is sent to the client whenever the repurchase agreement principal balance changes. Interest is credited to the client's checking account once a week and a confirmation is sent.

The U.S. Government Securities which collateralize your repurchase agreement will be noted on our records and detailed in the confirmation provided at the initiation of each transaction. Under opinion of our counsel, the security interest in these obligations is protected for a period of 21 days as is provided by the Uniform Commercial Code 9-304 (4). In addition, these securities are obligations according to the terms of our repurchase agreement and are held at the Federal Reserve Bank of Richmond for no other purpose.

The rate of interest on repurchase agreements is internally generated at the bank and usually changes daily - reflecting market conditions and the availability of necessary collateral. The size of the transaction is also a factor in rate calculation, with repurchase agreements of over \$1,000,000 commanding a premium rate at First American Banks.

Eurodollar Deposits

Eurodollars are deposit liabilities denominated in U.S. dollars, of banks located outside the United States. Eurodollar deposits may be owned by individuals, corporations, or governments from anywhere in the world. Because the Eurodollar market is relatively free of regulation, banks in the Eurodollar market can operate on narrower margins or spreads between dollar borrowing and lending rates than can banks in the United States. This allows Eurodollar deposits to compete effectively with deposits issued by banks located in the U.S.

The majority of money in the Eurodollar market is held in fixed-rate time deposits. The maturities range from overnight to several years, with most of the money in one-week to six-month maturities. At First American Bank, N.A. Eurodollar deposits are maintained at our Nassau branch.



The rate of interest on Eurodollars is internally generated at the bank and usually changes daily - reflecting market conditions. Euro-dollar deposits greater than \$1,000,000 also command a premium rate at First American Banks.

Certificates of Deposit

First American Bank also offers certificates of deposit with maturity dates on certificates of \$100,000 or greater ranging from 7 days to one year and can be tailored to meet a customer's particular maturity requirements. Factors such as the term and identity of the issuing bank determine the marketability and yield of the certificate.

The rate of interest on certificates of deposits is internally generated at the bank and usually changes daily - reflecting market conditions. Certificates of deposit greater than \$1,000,000 command a premium rate at First American Banks.

The following investment vehicles, commercial paper and Treasury securities, may be purchased by First American Banks on UPI's behalf.

Commercial Paper

Commercial paper is an unsecured promissory note issued by large financial or industrial companies in order to raise funds on a short-term basis. In general, commercial paper is available in denominations of \$100,000 or greater. Maturities on commercial paper range from overnight to 270 days. Choosing a proper maturity of commercial paper is important since a well-developed secondary market does not exist.

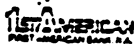
Commercial paper can be purchased on either a discounted basis or on an interest bearing basis. In either case, a 360 day basis is used and yields are identical.

Firms issuing commercial paper obtain ratings from at least one of three services, Moody's Investors Service, Standard & Poor's Corporation, and Fitch Investor Service.

Treasury Bills

Treasury bills are short-term obligations of the United States Government. They are highly liquid securities and a large, well-organized secondary market exists. Treasury bills may be purchased from a minimum denomination of \$10,000 up to \$1,000,000 in increments of \$5,000. The bills are sold on a discounted basis and the face amount is paid at maturity.

New offerings of three and six-month bills are made each week by the Treasury. The auction is usually conducted on Monday, with delivery and payment on the following Thursday.



IV. Disbursements

Controlled Disbursement

Since the disbursement service market has changed dramatically in recent years as a result of technological changes in corporate operations, First American Bank has met this challenge and provides its customers with a state-of-the-art disbursement services.

First American Bank's Controlled Disbursement Service provides our customers with same day information on the exact amount of money necessary to fund a disbursing account. Our Controlled Disbursement Account is maintained at Eastern Shore National Bank in Pocomoke City, Maryland. The primary objective of Controlled Disbursement is to avoid idle balances in a disbursement account and to identify the exact daily presentments. Controlled Disbursement allows UPI to determine its exact cash position early enough in the morning to invest in overnight money market instruments at attractive rates.

Each morning prior to 11:00 a.m., the Financial Office would be telephoned with the total number and the total dollar amount of checks clearing the disbursement account on that particular day. First American then initiates a wire transfer to Eastern Shore National Bank for the total amount of presentment and in turn debits UPI's account at First American Bank.

Based on recent customer experience, one additional day's float on each check written has been realized through Eastern Shore National Bank.

Given that UPI issues approximately 3,000 checks monthly, First American Bank offers Account Reconciliation for the reconciliation of all checks written during the month. With First American Bank's assistance the reconciliation process for this disbursement account can be simplified.

At month end, all checks paid during the month are sorted into numerical order and returned to your office with your checking account statement. You will also receive a report, either on hardcopy or magnetic tape, listing all checks paid in serial number order and the date each item was paid.

We also offer an additional enhancement to Account Reconciliation. If UPI would choose to provide First American Bank with specific information on those checks issued during the month, we can supply a report, again either on hard copy or magnetic tape, listing all checks paid in serial number order, all checks issued in serial number order, and an outstanding check balance.



-2-

South Africa (Johannesburg)	
Spain (Madrid)	
Sweden (Stockholm)	
Switzerland (Geneva)	BCCI
Tunisia (Tunis)	BCCI
Yugoslavia (Belgrade)	BCCI
Kenya (Nairobi)	BCCI
Great Britain	
. Jersey (Isle of Man)	BCCI
. London	BCCI

Latin American Region

Argentina (Buenos Aires)	BCCI
Brazil (Brasilia)	
Brazil (Rio de Janeiro)	BCCI (near future)
Chile (Santiago)	
Colombia (Bogota)	BCCI
Paraguay	BCCI
Peru	
Uruguay (Montevideo)	BCCI
Venezuela	
Mexico	
Honduras	
Nicaragua	
Guatemala	
Dominican Republic	
Puerto Rico	Banco Popular de Puerto Rico

At locations where there is not a BCCI location, UPI may continue with their current bank or we may suggest a BCCI or FABNA correspondent.



Exhibit 1

UNITED PRESS INTERNATIONALBRANCH LOCATIONS WHERE THERE ARE BCCI FULL-SERVICE BRANCHESAsia Division

Burma (Rangoon)	BCCI (if allowed by Bank of China)
China (Beijing)	
Taiwan (Taipei)	BCCI (recommend closing Citibank
Hong Kong	account and maintaining account with
	BCCI-Hong Kong)
India (New Delhi)	
Indonesia (Jakarta)	
Japan (Tokyo)	BCCI
Korea (Seoul)	BCCI
Singapore	
Pakistan (Karachi)	BCCI
Philippines (Manila)	BCCI
Thailand (Bangkok)	BCCI
Australia (Sydney)	BCCI (will soon open branch)
New Zealand (Wellington)	

European Division

Austria (Vienna)	
Belgium (Bruxelles)	
Czechoslovakia (Prague)	
Bulgaria (Sofia)	
Denmark (Copenhagen)	BCCI
Egypt (Cairo)	BCCI
England (London)	
Finland (Helsinki)	BCCI
France (Paris)	BCCI (in Frankfurt & Hamburg)
Germany (Bonn)	
Greece (Athens)	
Guinea (Conakry)	
Israel (Tel Aviv)	
Italy (Rome)	BCCI
Lebanon (Beirut)	
Morocco (Rabat)	
Norway (Oslo)	
Poland (Warsaw)	
Portugal (Lisbon)	
Rumania (Bucharest)	
U.S.S.R. (Moscow)	



Zero Balance Account - Payroll

A Zero Balance Account should also be used for UPI's payroll account. This account will allow for a zero balance to be maintained in the account and funds would be transferred from your concentration account automatically to cover each payroll check as it is presented for payment. This eliminates excess balances in the payroll account and also eliminates a weekly transfer from the concentration account to the payroll account. Since UPI currently uses the payroll vendor, Automatic Data Processing (ADP), for its payroll preparation, a transition can be made easily and First American can assist you in this transfer.



Exhibit 2

UNITED PRESS INTERNATIONAL

Recommended International Cash Control and Reporting System

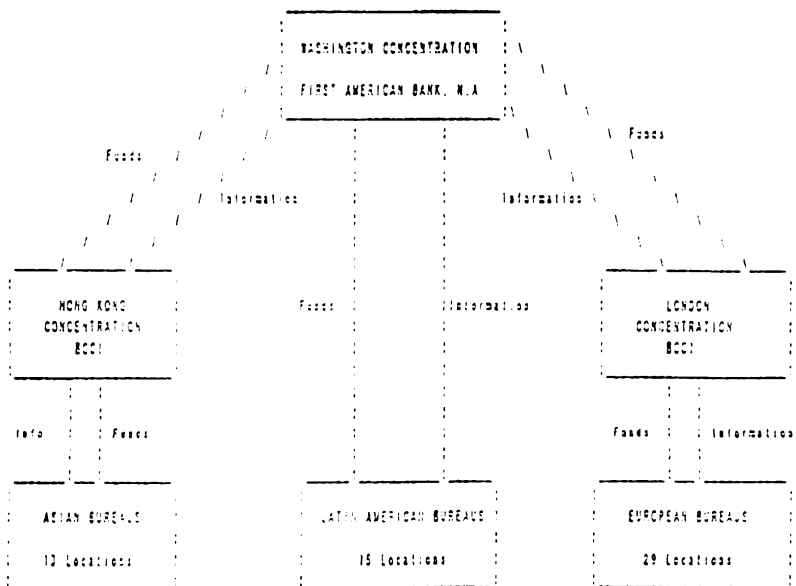
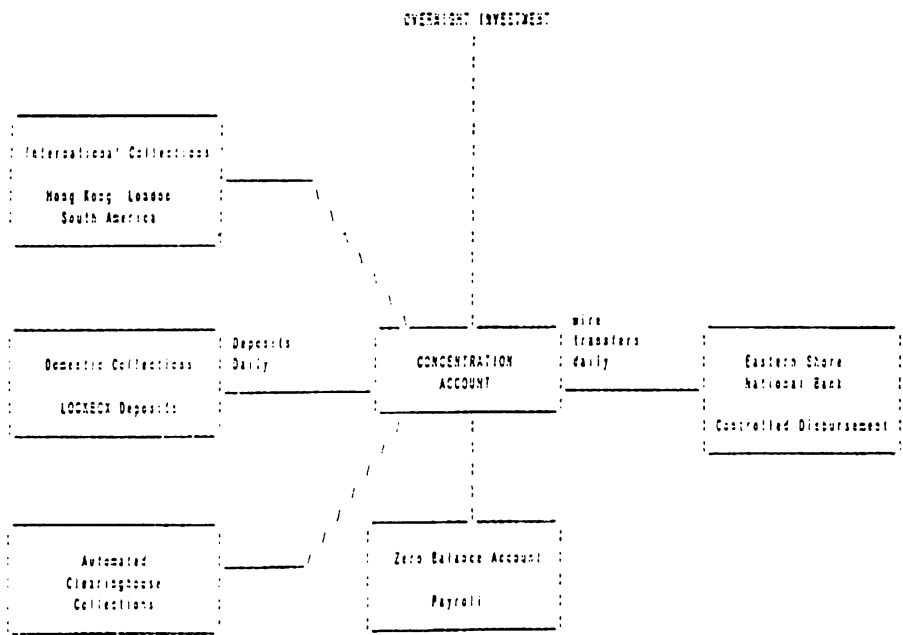




Exhibit 1

UNITED PRESS INTERNATIONAL

Recommended Account Structure



287622 BODI UR

RCA OCT 27 1012

892351 BODIAP 3
 ZOZO 07X138 1512 0422 077208
 WAS-DC/TO BODI WASHINGTON
 .202 TLX REF LON 3728/102 27.10.86

TO : MR. AMAD AWAN
 BODI WASHINGTON

YOUR INFO. HAPPY TO LEARN ABOUT NEW YORK SETTING THE COLLECTOR
 ACCOUNT AND THE SUBSTANTIAL ACCOUNT WITH FIRST AMERICAN. PLEASE DO
 FOLLOW UP THE CLARITY OF SERVICES WITH OUR UNITS AND IF EVER THERE IS
 ANY SHORTCOMING PLEASE DO BRING IT TO MY PERSONAL ATTENTION.

REGARD

AMAD AWAN

WASHINGTON DC

151237102
 07X138
 077208 1001 10
 107622 1001 10

Date of Call: 11/20/86

OFFICER CALL REPORT FORM

Name <u>United Press International</u>	Call Made On:	Type of Call:
Address <u>1400 I Street, N.W.</u>	Client	Service
<u>Washington, D.C. 20005</u>	Prospect	Sales
Telephone No. _____	Purpose <u>To have Barry thank Mr. Vasquez</u>	
Principal(s) _____	<u>Rana for opening accounts at FABNA</u>	
<u>Mario Vasquez Rana</u>	Call Referred by <u>Shaw Pittman</u>	
Primary Contact & Title _____	Type of Business <u>wire service</u>	
<u>Jack Kenney 898-8164</u>	S I C No. <u>7351</u>	
Calling Officer <u>S. P. Schmidt</u>	Annual Sales <u>\$90.0M (approx.)</u>	
	No. of Employees <u>1,500 (worldwide)</u>	
	Other Banks Used <u>ASB, M Bank</u>	
Name(s) of Other Bank Officer(s)/Department(s) Servicing Account _____		

BANKING SERVICES		ACCOMPLISHMENTS
	Used (X)	Discussed (X)
ODA SAV	X	
C.S.		X
Cash Management	X	A
Short Term Loans		X
Line of Credit		
Trust Services		
Leasing		
International Services	X	

Sold Service _____
Review Credit _____
Resolved Problem _____
Left Door Open <u>X</u>
Other _____
FOLLOW-UP
Call on Mr. Vasquez Rana
again in about three mos.
Date of Next Call: <u>2/1987</u>

COMMENTS

On Thursday, November 20th, 1986, Maureen McDonald, Barry Blank, and I called on UPI to thank Mr. Vasquez Rana for opening accounts with the bank. In addition, it was our intent to smooth over the unpleasantness we experienced at the last meeting. Specifically, it was Barry's job to appease Mr. Vasquez Rana with reference to our request that he cash collateralized all drawings for UPI.

While the meeting was relatively productive, we did not get any additional business out of it nor did we resolve any major issues. I do, however, believe that Mr. Vasquez Rana was pleased to receive the attention and he told us to come back so that we could keep up the dialogue. Therefore, I believe that we should continue working with their financial people in the near term and plan to call on Mr. Vasquez Rana again in about three months.

Sps
S. P. Schmidt

Form Distribution - C. L. Scott Cooke, Susan Schmidt, Maureen Lord, Maureen McDonald, Julie Miller and Amjed Awan, BCCI



BANK OF CREDIT AND COMMERCE INTERNATIONAL
SOCIETE ANONYME
REPRESENTATIVE OFFICE
1867 K STREET, N.W., WASHINGTON, DC 20006

November 24, 1986

Mrs. Betty Heitman
 Co-Chairman
 Republican National Committees
 310 First Street S.E.
 Washington, D.C. 20003

Dear Betty:

I wanted to thank you for arranging the lunch with Bill Walsh Jr.
 I think there is great potential for our two organisations to work
 together, and I hope to get together with him again soon.

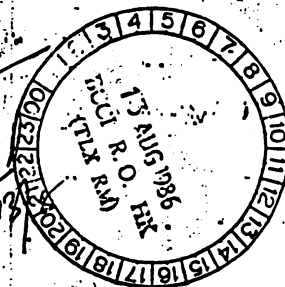
You, of course were looking marvelous as usual, hope you have a Happy
 Thanksgiving.

With warm regards,

Shahid Khan

72042 3CCRO HX

892251 BCCLNA G
 ZCZC ATX368 0116 0115 IMM132
 ROHX/TO: BCC (HK) LTD REP OFFICE HONG KONG
 002 TLX REF LON 7451/08E 12.08.86



TO MR DILDAR H RIZVI/MR SUDHIR VIRENDRA/MR S P CHANDARYARKAR
 BCC REGIONAL OFFICE HONG KONG

UPI - UNITED PRESS INTERNATIONAL

TOGETHER WITH REUTERS AND ASSOCIATED PRESS, UPI ARE ONE OF THE WORLD'S THREE MAJOR WIRE SERVICES PROVIDING NEWS STORIES AND INFORMATION GLOBALLY TO SUBSCRIBERS VIA ELECTRONIC AND SATELLITE TRANSMISSIONS.

UPI HAVE RECENTLY BEEN TAKEN OVER BY NEW MANAGEMENT WHO HAVE AGREED TO PLACE ITS ENTIRE US AND HEAD OFFICE BANKING PORTFOLIO WITH FIRST AMERICAN BANK, WASHINGTON AND ITS INTERNATIONAL OPERATIONS WITH BCCI.

WE SHALL ADVISE IN DUE COURSE THE NATURE OF YOUR LOCAL RELATIONSHIP AND ARRANGE FOR YOU TO MEET WITH UPI'S LOCAL MANAGER TO DISCUSS OPERATION OF THE ACCOUNT.

IN THE MEANTIME, KINDLY ARRANGE FOR 5 (FIVE) SETS EACH OF LOCAL AND FOREIGN CURRENCY ACCOUNT OPENING FORMS TO BE COURIERED IMMEDIATELY TO MR AMJAD AWAN IN BCCI, WASHINGTON D.C. AND ADVISE US BY TLX THAT THEY HAVE BEEN SENT.

WE ARE PLEASED TO ADVISE THAT BCC AND UPI ARE MUTUALLY REPRESENTED IN 30 CENTRES OF A TOTAL GPI GLOBAL COVERAGE OF 60 COUNTRIES. AS SUCH WE ARE TODAY REQUESTING INTERNATIONAL DIVISION IN LONDON TO SET UP TEST KEY FACILITIES AND EXCHANGE OF CONTROL DOCUMENTS BETWEEN ALL RELEVANT BRANCHES AND FIRST AMERICAN BANK, WASHINGTON.

KINDLY NOTE THAT THE UNDERSIGNED TOGETHER WITH MR BRYN OWEN WILL BE ACTING AS BCC'S GLOBAL COORDINATOR FOR THE UPI ACCOUNT AND AS SUCH REQUEST THAT ALL CORRESPONDENCE BE ENDORSED TO CMD.

IN THE CASE OF BRANCHES WITH LIMITED LICENCES, I.E. MERCHANT BANK, FINANCE CO ETC, KINDLY ADVISE MR AWAN AND CMD BY RETURN TLX AS TO WHAT TYPE OF ACCOUNTS, IF ANY, CAN BE OFFERED TO UPI.

YOUR KIND ASSISTANCE AND PROMPT ACTION IN THIS MATTER WILL BE MUCH APPRECIATED.

WITH KIND REGARDS

ABU R NIZAM
 CMD CSO.

N.B. THIS TELEX HAS BEEN SENT TO BOTH MARKETING ACCOUNT OFFICERS AND COUNTRY MANAGERS.

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WITH KIND REGARDS

ABU R NIZAM
CMD CSO.

N.B. THIS TELEX HAS BEEN SENT TO BOTH MARKETING ACCOUNT OFFICERS AND COUNTRY MANAGERS.

BANCRECOM-LONDON

Ahmad FYI.

3/4 JSL

44 AVENUE NEW YORK NY 10022

DATE: February 20, 1987

FROM: Omar Sadik
Marketing Dept.

TO: Mr. William Howard
Manager, Marketing

SUBJECT: U.S. A.I.D. - PRIVATE SECTOR REVOLVING FUND

With reference to my visit to Washington and meeting with the above organization, please find enclosed a detailed outline of the areas where the possibilities of Business actualization exist.

The overall meeting was very positive and the undersigned recommends our participation with this organization on a global basis.

Thanking you,

Omar Sadik

cc: Mr. S.R. Khan

Mr. Shahid Khan
BCC Washington

Mr. Don Eanerggi
Central EMP Division
BCC London



**CORRESPONDENT BANKING RELATIONSHIP
BETWEEN
FIRST AMERICAN BANK OF NEW YORK
AND
BANK OF CREDIT & COMMERCE INTERNATIONAL GROUP**

Relationship Background

A correspondent relationship has existed between First American Bank of New York and the BCCI Group since late 1984. Various branches, subsidiaries and affiliates of the Bank of Credit & Commerce International S.A. Luxembourg and the Bank of Credit & Commerce International (Overseas) Ltd. Grand Cayman maintain U.S. dollar accounts at FABNY. Over the years as FABNY demonstrated its superior service capability and efficient item processing, business volumes grew. At the present time, the total number of accounts is 45. Exhibit A provides a listing of the various accounts by location.

In early 1988 the relationship was reviewed from an overall profitability perspective, our per item charges were increased and we started soliciting business aggressively. Further price increases were put in place in mid 1990.

In late 1989 First American Bank of New York senior management members visited London to ascertain the Group's on-going creditworthiness and the damage to its business in the aftermath of the Tampa incident. Normally, BCCI's senior management has visited New York on a yearly basis to meet their various correspondents, such as Bank of America, American Express, Security Pacific, Bank of New York, First American Bank of New York, and others.

Banking Services

FABNY has a substantial deposit and credit relationship with the BCCI Group. On the deposit side, FABNY acts as a dollar clearing bank to settle foreign exchange, money market and trade transactions. This is an important and profitable group relationship as FABNY has demand deposits of some \$10 million on average. In addition FABNY receives \$15-35 million in overnight and term placements. This is a very competitive business and FABNY has only a small portion of BCCI's total U.S. dollar volume.

AMERICAN BANK

- 2 -

FABNY makes available credit lines (see appendix D) to numerous BCCI branches and affiliates. These facilities are used actively although not to their full extent. The Group's exposure is managed daily and it is generally the case that FABNY's deposits from BCCI exceed the credit outstandings to the Group.

FABNY receives compensation for these services in the form of demand deposits and cash fees.

All of the services performed by FABNY are typical correspondent banking services, to wit:

Non-Credit Related

- . fund transfers (Fed wire, CHIPS, book transfers)
- . automatic overnight sweeps (investment of excess demand deposit balances)
- . U.S. dollars & check deposits
- . clean and documentary collections
- . letter of credit reimbursements

Credit Related

- . intraday and overnight overdrafts to facilitate clearings
- . bankers' acceptance financings
- . letter of credit confirmations
- . money market placements
- . foreign exchange trades

Documentation

Regular international banking documentation procedures are followed. Control documents including test key arrangements and authorized signatory lists are exchanged with various branches, subsidiaries and affiliates. Account openings are preceded by our marketing efforts, telephonic conversations, letters and telexes. Terms and conditions are forwarded. Updated signatory lists are obtained on a continuing basis. Their payments and/or letter of credit transaction instructions are executed through proper authorized communications, i.e. SWIFT, letters or tested telexes.

First AMERICAN BANK

- 3 -

Other

Attached Appendices A to J lists information as follows:

- Appendix A. List of Demand Deposit Accounts
- Appendix B. DDA Balances as of Thursday, Feb. 7, 1991
- Appendix C. BCCI Placements O/N & Term with FABNY as of Thursday, Feb. 7, 1991
- Appendix D. J.A. Lucas Memo dated 11/16/90 to The Executive Committee/Board of Directors Regarding Bank of Credit & Commerce Group Credit approval
- Appendix E. Credit Exposure as of Thursday, Feb. 7, 1991
- Appendix F. Products & Services Utilization by Accounts
- Appendix G. List of Nostro Accounts & Balances as of Thursday, Feb. 7, 1991
- Appendix H. FABNY Placements O/N and Term with BCCI as of Thursday, Feb. 7, 1991
- Appendix I. Foreign Exchange Transactions as of Thursday, Feb. 7, 1991
- Appendix J. Detailed Account Statements

First AMERICAN BANK **Appendix A**
List of Demand Deposit Accounts
BOC GROUP ACCOUNTS
BRANCHES

BOCI Nassau, Bahamas
 BOCI Manama, Bahrain
 BOCI Dhaka, Bangladesh
 BOCI Chittagong, Bangladesh (COM A/C)
 BOCI Chittagong, Bangladesh (WES A/C)
 BOCI Bridgetown, Barbados
 BOCI Paris, France
 BOCI Georgetown, Grand Cayman
 BOCI Bombay, India
 BOCI Kingston, Jamaica
 BOCI Seoul, Korea
 BOCI Luxembourg
 BOCI Port Louis, Mauritius
 BOCI Amsterdam, Netherlands
 BOCI Lahore, Pakistan
 BOCI Freetown, Sierra Leone
 BOCI Colombo, Sri Lanka
 BOCI Colombo Fgn Cur, Sri Lanka
 BOCI Istanbul, Turkey
 BOCI Mersin, Turkey
 BOCI London, UK
 BOC Card Centre, UK
 BOCI New York Agency, USA
 BOCI Hodeidah, Yemen

SUBSIDIARIES/AFFILIATES

BOC Argentina
 BOC Australia
 BASIC Dhaka, Bangladesh
 BASIC Chittagong, Bangladesh
 BOC Botswana
 BOCI Sao Paulo, Brazil
 BOCI Sao Paulo, Brazil (Money Market A/C)
 BOC Cameroon
 BOC Canada
 BOC Misr (Egypt)
 BOC Ghana
 BOC Gibraltar Ltd.
 BCP Luxembourg
 BOC Madrid, Spain
 BCP Geneva, Switzerland
 BOCI Trinidad
 BOC Emirates, UAE
 BOC Uruguay
 BOC Zimbabwe
 National Bank of Oman, Oman
 IZ Company for Com. & Exch., Kuwait

February 7, 1991

CLAIBORNE PELL, RHODE ISLAND, CHAIRMAN
 JOSEPH R. BIDEN, JR., DELAWARE
 PAUL S. BARBARIS, MARYLAND
 ALAN CRANSTON, CALIFORNIA
 CHRISTOPHER J. DODD, CONNECTICUT
 JOHN F. KERRY, MASSACHUSETTS
 PAUL SIMON, ILLINOIS
 TERRY SANFORD, NORTH CAROLINA
 DANIEL P. MOYNIHAN, NEW YORK
 CHARLES S. ROBB, VIRGINIA
 JESSE HELMS, NORTH CAROLINA
 RICHARD G. LUGAR, INDIANA
 NANCY L. KASSERBAUM, KANSAS
 RUDY BOSCHWITZ, MINNESOTA
 LARRY PRESSLER, SOUTH DAKOTA
 FRANK H. MURKOWSKI, ALASKA
 MITCH MCCONNELL, KENTUCKY
 GORDON J. HUMPHREY, NEW HAMPSHIRE
 CONNIE MACK, FLORIDA
 GERYLD B. CHRISTIANSON, STAFF DIRECTOR
 JAMES P. LUCIER, MINORITY STAFF DIRECTOR

United States Senate
 COMMITTEE ON FOREIGN RELATIONS
 WASHINGTON, DC 20510-6225

By Facsimile 393-5760

March 6, 1992

Robert S. Bennett
 Skadden, Arps, Slate, Meagher & Flom
 1440 New York Avenue NW
 Washington DC 20005-2107

Re: Clark Clifford and Robert Altman
 Status of Answers to Interrogatories, Document Requests
 From Foreign Relations Subcommittee

Dear Mr. Bennett:

As David McKean and I discussed with you last week, we have reviewed the initial responses to interrogatories from Mr. Clifford and Mr. Altman and have some further questions arising out of those answers, enclosed herein. It would be appreciated if these interrogatories could be responded to by the end of March.

We continue to await the documents previously requested, which you advised us would be provided by now. If there is some factor which is continuing to cause delays, we would appreciate being so advised.

We have learned from the firm of Nussbaum & Wald, representatives of the liquidators of BCCI, that last month some sixteen boxes of BCCI attorney-client material and/or work product were delivered by your firm to the Justice Department pursuant to a Justice Department subpoena to BCCI.

Those documents should have been provided to the Foreign Relations Committee at the time of its transmission to the Justice Department pursuant to its subpoena to BCCI of May 23, 1991.

The documents involved have been described to us by the Nussbaum firm as including:

1. Five to six boxes of legal bills, mostly related to the Tampa case.
2. One to two boxes of Clifford and Warnke work product related to the Tampa case.
3. Three boxes of other law firm work product relating to Tampa.
4. Two boxes of BCCI attorney/client material mainly related to Tampa.
5. One to two boxes of Clifford and Warnke work product not related to Tampa.
6. Three boxes of other firm work product not related to Tampa.

It is my understanding that among these materials are legal bills to BCCI from its law firms; interviews relating to Amjad Awan; documents related to Nazir Chinoy and his extradition; documents concerning BCCI's expansion plans in the United States; documents relating to Ghaith Pharoan; and documents concerning Capcom, a BCCI affiliate.

The Subcommittee has scheduled its next hearing on BCCI for March 18, 1992 at 2pm, at which a BCCI officer will testify. Accordingly, it is requested that the BCCI documents provided to the Justice Department and reviewed by the Nussbaum firm be provided to the Subcommittee as soon as possible, but in any case no later than March 13, 1992.

If you have any questions concerning this letter, please do not hesitate to contact me, or David McKean of this office.

Sincerely,



Jonathan Winer, counsel
Senator Kerry

Enclosure

Followup Questions To Mr. Clifford and Mr. Altman

TO MR. CLIFFORD

19.) Who introduced Mr. Clifford and Mr. Adham? Has Mr. Clifford checked his business calender or other records to determine when the first meeting occurred? Where did the meeting take place?

21.) Mr. Clifford testified in September that he talked to individuals in the intelligence community about Mr. Adham. He has responded that he does not recall with whom in the United States intelligence operations he discussed Sheikh Adham. Does he recall whether he discussed Adham with:

- a) high level officials or low level officials?
- b) former officials or then-current officials?
- c) Richard Helms?
- d) Stansfield Turner?

50.) Does Mr. Clifford recall any meetings with Mr. Abedi regarding First American's takeover of National Bank of Georgia? If so, please specify the substance of any such meetings.

Did Mr. Clifford meet with Mr. Abedi in Florida in either 1986 or 1987 concerning the acquisition of the National Bank of Georgia? If so, please consult calendars or available records to provide the exact date, the location and the names of any other individuals who were in attendance.

100.) Has Mr. Clifford checked phone records to determine when he last talked with Mr. Lance? Who called whom? Did Mr. Clifford talk to Mr. Lance before his appearance at the Senate Banking Committee? What was the substance of the conversation?

TO MR. ALTMAN

1.) Has Mr. Altman checked his calender in response to this question? If possible, please be more exact as to the date of the Mr. Altman's introduction to Mr. Darwaish.

2.) Has Mr. Altman checked his calender or other records in answering this question? Did Mr. Altman meet Mr. Darwaish in this country or abroad? On how many occassions did Mr. Altman meet Mr. Darwaish? Where did those meetings occur?

44.) Mr. Altman has previously testified that "NBG adopted or practiced many of BCCI's banking concepts when it was owned by Dr. Pharaon."

The questions does not ask only for testimony not reduced to writing. Please set forth the specific banking concepts practiced at NBG when it was owned by Dr. Pharoan. Please explain the factual basis for Mr. Altman's statement that "NBG adopted or practiced" these concepts.

50.) Does Mr. Altman recall any meetings with Mr. Abedi regarding First American's takeover of National Bank of Georgia? If so, please specify the substance of any such meetings.

Did Mr. Altman meet with Mr. Abedi in Florida in either 1986 or 1987 concerning the acquisition of the National Bank of Georgia? If so, please consult calendars or available records to provide the exact date, the location and the names of any other individuals who were in attendance.

55-59.) Did Mr. Altman ever meet Awan in London? If so, please specify the date. Did Mr. Altman have any communication with Awan regarding the labelling or marking of BCCI documents as privileged, confidential, or attorney-client work product? If so, please describe the substance of any such communication.

61.) Please provide an answer which specifically describes what actions Mr. Altman took, if any, to review the Noreiga documents.

Mr. Altman states "I further recall that there was a stack of documents in the conference room at the time, which I believe were account records relating to General Noriega."

What was the basis for this belief? Was it is as a result of a physical review of the records by Mr. Altman?

65.) Did Mr. Altman discuss with BCCI employees the removal of documents from the United States to any overseas location after July 1, 1988? If so, please specify the date, the BCCI employees involved, and the substance of the documents.

With which BCCI employees did Mr. Altman discuss the removal of documents from the U.S. after the allegation was made public?

Please provide any documents referring to the removal of BCCI documents from the U.S. at any time from July 1988 through July 1991.

72.) How did Mr. Altman learn from representatives of Attock oil that Adham and Fulaij had an ownership interest in Attock oil? Who so advised him? When?

78.) and 79) Please provide all documents concerning First American's use of ICIC, including those referred to in Mr. Altman's answer to question 78.

85.) Please provide all calendar records and other documentation concerning Mr. Altman and any member of Congress's communications regarding Mr. Hammoud, BCCI, First American, or any BCCI officer, director, shareholder, or customer.

Did the conversation(s) referred to in your answer concerning Mr. Hammoud occur prior to the sale of Mr. Altman's CCAH stock to Mr. Hammoud?

Please specify in full the substance of any communications between Mr. Altman and the member of Congress set forth in your answer regarding Mr. Hammoud.

86.) What is the basis for Mr. Altman's knowledge of meetings between Mr. Hammoud and the elected official referred to in your answer? Please describe in further detail the substance of communications between Mr. Hammoud and any elected official of which you are aware regarding "Middle East issues" or any other matter.

89.) What was the advice and consultation provided by Clifford and Warnke to those reviewing the Monte Carlo accounts? Please provide any documents you may have regarding the review of accounts in Monte Carlo.

93.) Please specify the name or nature of the "feature film project" for which Mr. Adham sought legal advice. Were any memoranda prepared for this project? If so, please provide them to the Committee.

94.) How many potential investments were considered by Clifford and Warnke for Sheik Zayed? Please provide all documents which assess potential investments for Sheik Zayed.

105.) Does Mr. Altman know with whom at the Federal Reserve ICIC's possible status as a CCAH shareholder was discussed?

110.) During Subcommittee hearings, Customs Agent Robert Mazur testified: "I came to learn that the principal investigative firm working on behalf of BCCI had, in fact, retained another investigative firm for the sole purpose of investigating me..."

Was Mr. Altman ever made aware that investigators working directly or indirectly on behalf of BCCI were

investigating Mr. Mazur? If so, when and under what circumstances?

Did Mr. Altman participate in meetings with the investigative firm of Phillip Manuel in which discussions were held concerning the investigation of persons, by any private investigator, other than those pertaining to the Bilbeisi case?

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July 13, 1992

BY HAND

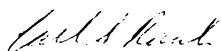
Senator John J. Kerry
421 Russell Senate Office
Building
Washington, D.C. 20510

Dear Senator Kerry:

Enclosed please find the affidavit of Robert A. Altman containing responses to the supplemental questions addressed to him presented in Johnathan Winer's letter dated March 6, 1992.

With best wishes.

Sincerely,



Carl S. Rauh

Enclosure

AFFIDAVIT OF ROBERT A. ALTMAN

I, Robert A. Altman, being duly sworn, do depose and state as follows:

I am providing this affidavit at the request of Senator John F. Kerry, Chairman of the Subcommittee on Terrorism, Narcotics, and International Operations of the Senate Foreign Relations Committee. By letter to my counsel dated March 6, 1992, my response was sought to additional questions submitted by Senator Kerry's staff. Many of those questions seek detailed information about conversations and events which occurred as many as fourteen years ago. The answers herein reflect my recollections of those matters, and are provided to the best of my knowledge and belief.

1. I am advised that my calendars do not reflect the date or location of my first meeting with Mr. Abdullah Darwaish.

2. I believe I had meetings with Mr. Darwaish both in the United States and abroad. I do not recall how many times I met Mr. Darwaish. To the best of my recollection and belief, meetings with Mr. Darwaish occurred in Washington, D.C. and in London, England.

44. Among the banking concepts that were characteristic of BCCI which appeared to be adopted or practiced at the National Bank of Georgia ("NBG") were a strategic emphasis on international banking (with a corresponding deemphasis by NBG on retail banking), use of a NBG corporate logo that was similar to the BCCI logo, the utilization of an open seating plan for senior executives in NBG's corporate offices, and the distribution of BCCI corporate literature to some NBG personnel. These practices were discontinued after First American purchased NBG in 1987. This answer is based upon my personal observations, my review of Reports of Examination prepared by the Office of the Comptroller of the Currency, and discussions with various people, including Guy Freeman, the individual who was retained to serve as President and Chief Executive Officer of NBG.

50. To the best of my recollection, there was a meeting with Agha Hasan Abedi in Europe in the Spring of 1986, when I was informed by Mr. Abedi that officials of North Carolina National Bank ("NCNB") had met with Dr. Ghaith Pharaon in Europe, and made a bid to purchase the National Bank of Georgia at a price which exceeded First American's offer. As I recall, Mr. Abedi asked me whether First American was prepared to increase its offer for NBG, and I told him that this would

have to be discussed with the CCAH directors. It was also subject to the willingness of the CCAH shareholders providing the funding for the purchase.

I do not recall any meeting with Mr. Abedi in Florida in 1986 or 1987 concerning the acquisition of the National Bank of Georgia. I am informed by counsel that my calendars do not indicate that I met with Mr. Abedi in Florida in either 1986 or 1987.

55-59. I do not recall a substantive meeting with Mr. Awan in London. He was in London in 1988 during one of my visits with BCCI officials. I do not recall a discussion with Mr. Awan regarding the labeling or marking of BCCI documents as privileged, confidential, or attorney-client work product.

61. I believe that after the Noriega documents were provided to the United States authorities by the British authorities, they were reviewed by other United States counsel representing BCCI. In connection with that review, I may have been shown some of the Noriega related documents; however, I have no specific recollection of reviewing them at that time.

With reference to the documents in the conference room in London, it is my recollection that I was advised by the individuals attending the meeting that the documents were account records which related to General Noriega. I also refer you to my previous answer to this question.

65. I have no specific recollection of having discussed the removal of BCCI documents from the United States to an overseas location.

72. While I do not specifically recall it, I believe I was informed by representatives of Attock Oil at a meeting in Washington, D.C. in the fall of 1985 that Sheikh Kamal Adham and Mr. Faisal al-Fulaij had an ownership interest in Attock Oil.

85. To the best of my recollection, the referenced conversation concerning Mr. Hammoud occurred after I had sold CCAH stock to Mr. Hammoud. To the best of my recollection, Senator Orrin Hatch mentioned to me that he knew Mr. Hammoud, and had talked with him about Middle East issues, including the situation involving American hostages held in the Middle East.

86. As I indicated in my previous answer, "I do not have personal knowledge of any meetings between Senator Hatch and Mr. Hammoud." See also my answer to question 85.

89. My previous answer to this question appeared at 90. I had advised BCCI that a careful review should be made of accounts in various locations to identify any suspicious banking transactions, and to ensure that the Bank's facilities were not being misused for improper or illegal purposes. In this regard, I discussed with other counsel representing BCCI the account reviews that were conducted in various locales, including Monte Carlo. I do not recall specific discussions concerning the Monte Carlo account reviews.

93. To the best of my recollection, the name of the film project was "The Adventures of Pippi Longstocking." (I am advised that there was a letter written to Sheikh Adham regarding this matter. I understand that this letter is subject to the attorney-client privilege and cannot be provided without the express authorization from Sheikh Adham).

94. I do not recall how many investments were considered by Clifford & Warnke on behalf of Sheikh Zaied.

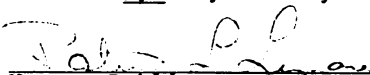
105. ICIC's possible status as a CCAH shareholder was discussed with Mr. Robert Mannion and Mr. William Taylor of the Federal Reserve, among others. In addition, as previously indicated, the subject was covered in a letter dated November 24, 1978, addressed to Lloyd M. Bostian, Jr. of the Federal Reserve Bank of Richmond. A copy of that letter was sent to Mr. William W. Wiles of the Federal Reserve Board of Washington. It is noted that the subject was also reflected in the Schedule 13D filings with the Securities and Exchange Commission.

110. I do not recall being advised that investigators retained by BCCI were reviewing the background of Mr. Robert Mazur. I have learned that a suggestion may have been made by counsel that BCCI and other defendants in the Tampa criminal case examine Mr. Mazur's background as an important prosecution witness. I understand that BCCI's counsel decided not to pursue such an investigation.

I do not recall meetings with employees of the Phillip Manuel firm to discuss investigations other than those pertaining to the Bilbesi case.


Robert A. Altman

Subscribed and sworn before
me this 13th day of July 1992


Notary Public *Exp. 8/31/94*

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May 20, 1992

VIA FEDERAL EXPRESS

Honorable John F. Kerry
United States Senator
Chairman, Subcommittee on Terrorism,
Narcotics and International Operations
Senate Foreign Relations Committee
421 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Kerry:

Enclosed please find the documents previously identified on a privileged index submitted to the Senate Subcommittee on Terrorism, Narcotics and International Operations on October 23, 1991. These materials are being provided pursuant to the terms outlined in your letter to me dated May 18, 1992.

With best wishes.

Very truly yours,

Carl S. Rauh
Carl S. Rauh

Enclosures

**INDEX OF DOCUMENTS WITHHELD ON THE BASIS OF
THE ATTORNEY-CLIENT PRIVILEGE AND/OR
WORK PRODUCT DOCTRINE**

- | | | |
|----|---|--|
| 1. | Date:
Author:
Addressee:
Document Type:

Recipient(s)/Distribution: | None indicated
None indicated
None indicated
Confidential Memorandum of
Client/Witness Interview
None indicated |
| 2. | Date:
Author:
Addressee:
Document Type:

Recipient(s)/Distribution: | August 29, 1988
Robert C. Sanders, Esq.
The File
Confidential Attorney
Memorandum
None indicated |
| 3. | Date:
Author:
Addressee:
Document Type:

Recipient(s)/Distribution: | September 30, 1988
John F. Kovin, Esq.
The File
Confidential Attorney
Memorandum
None indicated |
| 4. | Date:
Author:
Addressee:
Document Type:

Recipient(s)/Distribution: | September 27, 1988
John F. Kovin, Esq.
The File
Confidential Attorney
Memorandum
Robert A. Altman, Esq.,
Robert C. Sanders, Esq. |
| 5. | Date:
Author:
Addressee:
Document Type:

Recipient(s)/Distribution: | January 26, 1989
Robert C. Sanders, Esq.
Robert A. Altman, Esq.
Confidential Attorney
Memorandum
None indicated |

6. **Date:** September 22, 1988
 Author: John F. Kovin, Esq.
 Addressee: Robert A. Altman, Esq.,
 Robert C. Sanders, Esq.
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated
7. **Date:** September 21, 1988
 Author: John F. Kovin, Esq.
 Addressee: Robert A. Altman, Esq.,
 Robert C. Sanders, Esq.
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated
8. **Date:** September 20, 1988
 Author: John F. Kovin, Esq.
 Addressee: Robert A. Altman, Esq.,
 Robert C. Sanders, Esq.
 Document Type: Confidential Memorandum
 of Client/Witness
 Communication
 Recipient(s)/Distribution: None indicated
9. **Date:** September 19, 1988
 Author: John F. Kovin, Esq.
 Addressee: The BCCI File
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated
10. **Date:** None indicated
 Author: None indicated
 Addressee: None indicated
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated
11. **Date:** None indicated
 Author: None indicated
 Addressee: None indicated
 Document Type: Chronology
 Recipient(s)/Distribution: None indicated

12. **Date:** None indicated
 Author: None indicated
 Addressee: None indicated
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated

13. **Date:** September 7, 1988
 Author: John F. Kovin, Esq.
 Addressee: Robert A. Altman, Esq.
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated

14. **Date:** August 29, 1988
 Author: Robert C. Sanders, Esq.
 Addressee: The File
 Document Type: Confidential Memorandum of
 Client/Witness Interview
 Recipient(s)/Distribution: None indicated

15. **Date:** August 11, 1988
 Author: John F. Kovin, Esq.
 Addressee: The File
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: Robert A. Altman, Esq.

16. **Date:** August 10, 1988
 Author: Robert A. Altman, Esq.
 Addressee: The File
 Document Type: Confidential Attorney
 Memorandum
 Recipient(s)/Distribution: None indicated

17. **Date:** None indicated
 Author: None indicated
 Addressee: None indicated
 Document Type: Confidential Memorandum of
 Client/Witness Interview
 Recipient(s)/Distribution: None indicated

18. **Date:** None indicated
 Author: None indicated
 Addressee: None indicated
 Document Type: Chronology
 Recipient(s)/Distribution: None indicated

19. **Date:** None indicated
Author: Robert A. Altman, Esq.
Addressee: The File
Document Type: Confidential Attorney Memorandum
Recipient(s)/Distribution: None indicated
20. **Date:** June 1, 1988
Author: Clark M. Clifford, Esq.
Addressee: Robert A. Altman, Esq.
Document Type: Confidential Attorney Memorandum
Recipient(s)/Distribution: None indicated

PRIVILEGED AND CONFIDENTIAL

INTERVIEW WITH MR. AMJAD AWAN AT
CLIFFORD & WARNKE ON FEBRUARY 23, 1988

Mr. Awan stated that he was the BCCI country manager in Panama for three years, between 1981 and 1984.

Mr. Awan came to the Washington representative office of BCCI in June of 1984 and was subsequently transferred to BCCI's Miami office.

After Mr. Awan left Panama in 1984, three men succeeded him as country manager. The first was Mr. Mamood, who held the position of country manager from late 1984 to late 1985. He was replaced by Mr. Lynch, who was posted to London shortly thereafter. Mr. Bilgrami is the current country manager.

The immediate problem arose as follows:

BCCI's New York office believes that BCCI may receive a subpoena, perhaps from Congress, to testify about BCCI's role vis-a-vis General Noriega. At the same time the Miami Herald wanted to interview Mr. Shafi, general manager for Latin America in Miami.

Mr. Shafi told Mr. Awan that twelve other banks had been named as possible conduits of drug money.

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- 2 -

Mr. Awan stated that he has a personal relationship with General Noriega that developed when Mr. Awan was the BCCI country manager in Panama between 1981 and 1984.

In 1982 or 1983, General Noriega gave Mr. Awan \$100,000 to \$150,000 to open an account in London. This account was opened. BCCI issued VISA cards on that account to General Noriega, his wife, and three daughters. Mr. Awan believed that these were personal cards.

During this period, General Noriega asked Mr. Awan to conduct business on behalf of the Panamanian government. Mr. Awan solicited business. General Noriega asked Mr. Awan for remittances for equipment, letters of credit, and standby letters of credit, but Mr. Awan did not comply because of a lack of collateral.

Mr. Awan went to social functions at the Presidential residence of President Torrijos where he sometimes saw General Noriega. He also saw General Noriega at other social functions. Mr. Awan never visited General Noriega at his home, however.

General Noriega helped BCCI acquire a banking license after the initial application was denied. Mr. Alaudin Shaik, who is no longer with BCCI, helped acquire the license with General Noriega's assistance.

- 3 -

General Noriega was head of the defense forces. He contacted the relevant civil authorities, the Minister of Finance, to help secure the license. Mr. Awan does not know why the original license application was originally turned down.

Mr. Awan was the second country manager in Panama. He worked there for three years and then left.

It was not known that General Noriega was involved in drug trafficking. General Noriega was generally believed to be corrupt. Business activities in Panama must have the patronage of the National Guard or the Armed Forces. The Armed Forces presumably get a cut in return for patronage.

When Mr. Awan first arrived in Panama, in 1981 General Noriega was a colonel in charge of intelligence. He then rose to the fourth position of power in the military. He eventually maneuvered the other three out and became head of the defense forces. It was generally known that the defense forces were involved in business.

There are 140 foreign banks in Panama. Panama is a banking center. Many banks do not enter the local market. BCCI, however, did engage in the large import/export market, dealing in import letters of credit. Panama is a Free Zone --

- 4 -

a zone in which goods can enter duty free. A lot of consumer goods, electronics and so forth, are smuggled into the rest of Latin and South America. No documentation is required because of the Free Zone. Other bank business arises from the registering of vessels.

The advantage of booking in Panama is that there is no tax on the booking business. Local bank business is taxable.

A lot of flight capital enters Panama from South America. Panama has no restrictions on the import and export of currency. The largest amount of currency comes from Venezuela. Capital comes in from Columbia as well.

A good deal of forged currency comes from Columbia. This forged currency is personally carried by courier.

There are no banking laws in Panama regarding the depositing of cash. However, the Bankers' Association made a voluntary decision that such money should be transferred to the National Bank of Panama -- the Panamanian equivalent of the Federal Reserve with some of the duties of a Central Bank -- before being sent to the United States.

BCCI used to lend the National Bank considerable sums of money. The National Bank would borrow from other banks as well, like Chase. BCCI refused to lend the National Bank money on several occasions.

Cocaine is produced in Peru and Bolivia and refined in Columbia. Funds are flown in from Peru and Columbia, but not from Bolivia. BCCI has 32 branches in Columbia. The size of the individual deposits from Columbia varies from \$5,000 to \$100,000,000. Sometimes the deposits are delivered in suit cases of cash (\$200,000 to \$300,000) or in checks or third party checks.

Money exchangers either convert the money right in the bank or has a draft which he draws in Panama.

Without a doubt some of this money is originally drug money, but it comes in a different form.

Foreign exchange dealers have a steady flow of deposits. Columbia pesos are converted to dollars in Columbia.

There was always an undercurrent that alot of the money in Panama may be drug money, but BCCI felt it was dealing with lawful activity in dealing with the foreign exchange dealers.

BCCI never converted pesos to dollars.

Since 1981, BCCI has enjoyed a steady increase in profits in Panama. The volume in 1981 was 2.5 million. The volume in 1987 was 13 million. But this is overall business, not drug money. In 1981 there were only two BCCI offices in Latin America. Now there are 65 offices. The referral business has been good. There are many individual accounts and portfolios with central banks.

As for the other banks without so many branches, they probably deal with drug money. Some banks are generally known to handle drug money.

Mr. Awan knows of no specific instances of drug money passing through BCCI. It is possible some was laundered drug money. Deposits are made by various Panamanian Corporations. These are shell corporations that have bearer shares. A reputable law firm would come to the bank and request that the bank open an account for a corporation. This can be risky for the bank however. For example, in 1982 \$3.7 million in U.S. Treasury checks were forged, even though cleared by the Treasury. These checks were stolen by APO in San Francisco. BCCI had to absorb a loss of \$1.7 million. There is no claim under Panamanian law against the law firm and BCCI could not locate the shell corporation.

- 7 -

BCCI did not as a practice ask customers "Is this money drug money?"

People don't keep their dollars in Columbia because of the inflation. They send it to Panama.

The major U.S. banks in Panama would also be using the money exchanges. Thus, BCCI is in the same position as other banks. There are 20 banks in Panama that do most of the business. Chase does \$5 billion in business, Citibank \$4 billion, Bank of America \$13 and a half billion. Chemical Bank also does alot of business. BCCI does 1/2 billion. It is difficult to know how much of a bank's business could potentially be drug money, however, because much of the business is booking business and these figures include both booking business and local market business.

Nothing in the way BCCI conducted business would put BCCI in a special category.

General Noriega's business with BCCI was limited to the \$200,000 to \$300,000 he deposited for VISA cards, etc. But Mr. Awan became a personal friend of General Noriega. They became very close after Mr. Awan left Panama in 1984. General Noriega asked Mr. Awan to make hotel reservations, and to book limousine and airline tickets. Mr. Awan would often

- 8 -

use his own credit cards to perform these services because the BCCI office in Washington in only a representative office. General Noriega would then reimburse Mr. Awan either by depositing money at BCCI's branch in Panama, at its branch in London, or made reimbursement through Panamanian Ambassador.

Mr. Awan meet General Noriega in New York on one occasion and asked Mr. Awan to give him \$100,000 in cash. There is a currency report form for this transaction.

Mr. Awan stated that apparently two federal grand juries in Miami are investigating allegations against General Noriega and that there have been Congressional hearings. The witnesses at the Congressional hearings included two Americans convicted of drug smuggling, one Panamanian pilot also convicted, and Jose' Blandon, Consulate General for Panama in New York.

Mr. Awan stated that he did not believe that General Noriega was involved in the drug business. He thinks that the opposition party trumped up the charges.

Mr. Awan stated that the other employees at BCCI's Panama branch would stand up under questioning. There are a total of 150 employees there, mostly Panamanian. They have a high degree of loyalty to the Bank.

The FBI first called in November. Two weeks ago there were articles in the New York and Miami newspapers. Then the Miami Herald called to say it wanted to interview Mr. Shafi.

Mr. Awan asked Mr. Naqui if he should continue with his normal contacts and travelling. Mr. Naqui stated that Mr. Awan should continue as usual but should try to limit his contacts with General Noriega.

Bill Howard, a BCCI employee in New York, was served four subpoenas regarding transfers from Monte Carlo to New York. Although this is an unrelated matter, Mr. Awan believes that there may be subsequent questioning about General Noriega's relationship with BCCI.

Mr. Awan then produced a sampling of documents. These were hotel bills, airline tickets, etc., that he paid for General Noriega. These documents are not on file at BCCI.

Jose Blandon testified at the Congressional hearings but he did not mention BCCI. At least such reference was not reported in the press. [The hearing transcript reveals, however, that Mr. Blandon did mention BCCI].

- 10 -

Mr. Awan said that he had the most knowledge about the Bank's dealings with Mr. Noriega. Patrick Lynch would know no more or no less than Mr. Awan as to whether the money passing through the bank was clean or dirty money.

The Bank's policy was not to accept money from drug dealers or money launders.

Mr. Awan said that some witnesses had stated that they deposited large amounts at BCCI's Panamian branch. Mr. Awan says this was not true if the deposits were in individual accounts. Institutional accounts are more difficult to monitor.

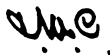
June 1, 1988

MEMORANDUM TO: Robert A. Altman

On Wednesday, June 1, at 11:00 am I had a phone call from Mr. Naqvi in London. He had placed the call to you, but in your absence then spoke to me. I explained to Mr. Naqvi that the reason you were away was that you were in California following up on information regarding the possible purchase of a bank.

His call had to do with the BCCI bank in Panama. There had been brought to his attention an article in the New York Times of Wednesday, May 25, that referred to the Panamanian office of BCCI. The report involved missing documents from the bank's records and stated that the authorities have linked BCCI in Panama to money-laundering operations.

Mr. Naqvi says that there are two individuals who operate the bank in Panama and he has told them to come to Washington to see us. He believes that they will reach here on Friday. I informed him that I would be in Texas on Friday, but I thought you would be back in the office. He stated that the men would remain here as long as we required their presence. After we have talked to the men we are to report to Mr. Naqvi. The matter is of such importance to him that he may, after our conversation, decide to come to the United States.


C.M.C.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

August 10, 1988

Memorandum to the File

From: Robert A. Altman

Re: BCCI

On Tuesday, August 9, at 3:00 p.m., we met with Jack A. Blum, Special Counsel to the Senate Committee on Foreign Relations, and his colleague, Kathleen Smith. The purpose of the meeting was to discuss subpoenas duces tecum which were issued on July 27, 1988, to Bank of Credit and Commerce International Overseas, Ltd., Bank of Credit and Commerce, Ltd., Mr. S.M. Shafi, and Mr. Kalid A. Awan. There was some uncertainty on our part as to whether each of the entities and each of the individuals had in fact been served with process. Late yesterday afternoon Kathleen Smith confirmed by telephone that the United States Marshall's Office claims to have effected personal service.

The subpoenas are returnable on August 11, 1988. However, by agreement between Mr. Clifford and the Foreign Relations Committee, the time for production of documents has been extended until September 11.

- 2 -

During the course of our discussion which lasted about an hour and 20 minutes, Jack Blum described in detail the information collected during the investigation and public hearings by the Subcommittee on Terrorism, Narcotics and International Communications, chaired by Senator John F. Kerry. From its sources, the Subcommittee has been led to believe that BCCI, through its banking locations in Panama, Colombia and in Miami, Florida, has had a major involvement in the management of assets for General Manuel Antonio Noriega, the current head of the Panamanian government; Michael Harari, reputed to be a close aide of Noriega's, an arms dealer, and formerly an Israeli secret service agent; and various other individuals from Panama and Colombia with major involvements in international drug trafficking. The Subcommittee staff has also been led to believe that BCCI, through its banking locations in Colombia and Panama, has been significantly involved in the laundering of large amounts of cash obtained from the sale of illicit drugs in the United States. The staff has also been led to believe that Messrs. Awan and Shafi have not only been involved generally in these activities, but that in their extensive travels, they (or at least one of them) have sought to manage the funds of General Noriega in 1987 to make it difficult to trace and/or seize his assets.

- 3 -

Without going into other specifics for the purpose of this memorandum, the following constitutes a brief outline of salient points covered with the staff:

(1) The staff has amassed extensive information on BCCI. It is their understanding that General Noriega was instrumental in helping BCCI secure a banking charter in Panama. Information on BCCI has been provided by third parties, including government officials and other banks, as well as current and former employees of BCCI.

(2) We advised the Committee that we would soon be going to Miami to begin to assemble facts and related documents and, if need be thereafter, to Colombia and Panama. We expressed concern over the breadth of the subpoena and in the ensuing discussion were advised that the Committee was not interested in general deposit relationships the bank had with customers in those countries. The Committee was informed that BCCI manages substantial assets of drug dealers and this was their focus. The staff agreed to limit their subpoena to documents relating to account relationships which in the aggregate exceed \$5 million. The time frame of interest is from 1981 to date. We advised the staff we would consider the scope of their requested production.

(3) Altman told them that it was the intention of BCCI's senior management to be cooperative and helpful. He

- 4 -

stated that management was unaware of any impropriety of the bank or its employees.

(4) In response to the staff's inquiry, Altman described BCCI's relationship with First American and explained Clifford's and Altman's long-standing representation of the Bank. Altman also expressed our complete confidence in BCCI's management. He stated that criticism that had been levelled at the Bank over the years had proved, upon careful investigation, to be groundless and without merit.

(5) We agreed to provide to them, if available, a copy of BCCI's public offering document of several years ago which describes the bank's corporate structure and shareholders.

(6) The Committee is to make available to us a package of documents which were generated at the time of the hearings earlier this year, and particularly a large chart showing the flow of money and drugs into and out of Central and South America. BCCI is said to form part of the "conspiracy" depicted in the chart.

(7) To the staff's knowledge, BCCI is not currently the focus of the ongoing grand jury investigation of this matter. There is clear cooperation between the Committee and the grand jury's efforts.

- 5 -

Mr. Clifford, in particular, and the firm generally have enjoyed an excellent relationship with the Committee over the years. In this instance, we find Mr. Blum initially to be reasonable in his approach to this investigation. Mr. Blum indicates that he understands the practical problems that may arise in seeking production of documents from Colombia and Panama and will work with us in this regard. He believes that most, if not all, of the relevant documents can be found in Miami. We agreed to have continuing discussions with him as the matter progresses.

THE ORGANIZATION OF THE CRIMINAL EMPIRE

Manager:

Manuel Antonio Noriega

Private Group	Military Operations Group	Offices of the Government	Private Banks	Private Group of "Legal" Businesses
<ul style="list-style-type: none"> Enrique Pretelt Floyd Carlton Richard Bilonick George Krupnick Carlos Wittgreen George Novey III Cesar Rodriguez (deceased) 	<ul style="list-style-type: none"> Nivaldo Madrinon Luis Del Cid Luis Cordoba Hilario Trujillo Luis Quiel Cleto Hernandez Alberto Purcell Jaimie Benitez Lorenzo Purcell Marcos Justines 	<ul style="list-style-type: none"> Customs (Carlos Garcia) Immigration Passports Civil Aviation National Bank Attorney General Comptroller General 	<ul style="list-style-type: none"> ICCB (Lyc) Swiss Bank Banco Cafetero Inter Bank Others 	<ul style="list-style-type: none"> Carlos Buque Idelfonso Riardi Mike Harari AOKI (Japanese Group) Ramon Sleiro

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

August 11, 1988

Memorandum to the File

Re: BCCI

In accordance with the agreement reached on Tuesday, August 9, at our meeting with Jack A. Blum, Special Counsel to the Senate Subcommittee on Foreign Relations, and his colleague, Kathleen Smith, yesterday we picked up from the staff, materials which are listed below:

(1) Chart entitled, "THE ORGANIZATION OF THE CRIMINAL EMPIRE, Manager: Manuel Antonio Noriega". In the upper right-hand corner in blue ballpoint pen it is listed as a "Blandon exhibit". This is presumably the chart to which reference was made at our meeting and under the column, "Private Banks", the first bank listed is ICCB. After that entry the word "typo" is written in a parenthesis in blue ballpoint pen. A logical inference that one could draw is that this is a reference to the Bank of Credit and Commerce International - BCCI.

(2) April 6, 1988 transcript of the testimony of Ramon Milian Rodriguez before the United States Senate

- 2 -

Subcommittee on Terrorism, Narcotics and International Communications of the Committee on Foreign Relations ("Kerry Subcommittee").

(3) February 9, 1988 transcript of the testimony of Jose Blandon before the Kerry Subcommittee.

(4) February 10, 1988 transcript of the testimony of Jose Blandon before the Kerry Subcommittee.

(5) February 10, 1988 (afternoon session) transcript of the testimony of Floyd Carlton before the Kerry Subcommittee.

(6) February 11, 1988 transcript of the testimony of Ramon Milian Rodriguez before the Kerry Subcommittee.

(7) April 4, 1988 transcript of the testimony of Jose Blandon before the Kerry Subcommittee.

(8) April 9, 1988 transcript of the testimony of Jose Blandon before the Kerry Subcommittee.

This testimony is being reviewed for references to BCCI as they may relate to the general subject matter of the investigation and responses to subpoenas directed to the Bank and two of its officials.

J.F.K.

cc: Robert Altman (copy of Blandon exhibit attached)

September 7, 1988

Memorandum to Robert Altman

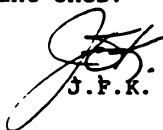
Attached is a copy of my memorandum of yesterday's discussion with Jack Blum. Because both you and I were on the subsequent telephone conversation with him this afternoon, without any narrative detail, listed below are some of the points we covered:

- (1) You are to meet with Blum on Friday, September 9 at 2:30 p.m. in his office -- 446 Dirksen SOB.
- (2) You and I are to meet with Blum and produce documents on Wednesday, September 14 at 11:00 a.m.
- (3) You learned that Amjad Awan had been served with a subpoena at his residence in Miami and when you raised this point with Blum, he apologized for not having notified us that the Committee intended taking this action, even though we had been earlier advised that Awan could appear on a voluntary basis.
- (4) Blum made general assertions about the need for a meeting, "sooner rather than later", but principally indicated that he needed to know by September 30 whether additional hearings would be scheduled and, if so, whether they would be public hearings. Blum seems to believe that a review of documents to be produced by BCCI

- 2 -

and interviews of Shafi and Awan -- the latter of whom he regards as the most important person -- will be determinative of the need for additional hearings.

There may be additional points but I believe that these are the most important ones.



J.F.K.

Attachment

September 7, 1988

Memorandum for the BCCI File

On Tuesday afternoon, September 6 at approximately 4:20 p.m., Jack A. Blum, Special Counsel to the Committee on Foreign Relations (224-5382), attempted to reach Bob Altman by telephone for the purpose of establishing a meeting on Wednesday, September 7. Bob Altman was away from the office at the time and asked that I return the call, which I did at about 5:00 p.m.

When the call was received by the Committee staff -- it sounded like Kathleen Smith -- she reported that Mr. Blum was on the other line, but when I identified myself, she said, "Oh, he needs to talk with you right now" and then presumably interrupted Mr. Blum who, within moments, came on to the line.

Mr. Blum seemed much more animated than when we had spoken with him in person in August and under pressure to proceed promptly with the aspect of his investigation which involves BCCI. Early in the conversation, I explained to him the efforts we had undertaken to this point and that we should

- 2 -

be in a position soon to make a partial production of documents. I explained that a number of people in the firm have been involved during the past three weeks in a U.S. District Court case involving a temporary restraining order and that it had been on a seven-days-a-week basis from which there would finally be some temporary relief beginning at the end of this week. He said he assumed that it was on a totally unrelated matter and I confirmed to him that it was, without identifying the parties in the JOA matter.

Mr. Blum agreed to meet with us on Wednesday morning, September 14. At a later stage in the conversation, however, he asked when our document production was due and I told him that as best I could determine, it was technically required on Sunday, September 11, based upon the earlier agreement Mr. Clifford had reached with the Committee staff. I suggested that we could make a partial production at the time that we make a visit to his offices on September 14 and that there were several other items receipt of which we were waiting and we might need to supply them soon thereafter. Mr. Blum then referenced serious "calendering problems" that he was encountering and asked about the availability of the BCCI individuals for an interview. I told him that I thought Mr. Shafi was generally available in this country but that we were unsure about the availability of Mr. Awan. Because of the

- 3 -

general sense of both urgency and immediacy that Mr. Blum conveyed throughout the conversation, I agreed that if Bob Altman were available the following morning, we would telephone him again to further consider the points he had raised.



J.F.K.

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

MEMORANDUM

August 29, 1988

TO: The File
FROM: Robert C. Sanders
RE: BCCI/Panama

NOTES OF MEETINGS WITH BCCI OFFICIALS IN MIAMI
ON AUGUST 16, 17, 1988

Messrs. Altman, Kovin, and Sanders met with various officers of BCCI in Miami on August 16, 17, 1988 to discuss how and in what manner BCCI should respond to four subpoenas issued to BCCI and its personnel by the Subcommittee on Terrorism, Narcotics, and International Operations of the Senate Foreign Relations Committee.

The BCCI officials participating in these talks were Mr. Rizvi, head of operations in the Western Hemisphere, who is based in London; Mr. Shafi head of operations in Central of South America, who is based in Miami; Mr. Awan former country manager of BCCI's Panama office, now based in Miami; Mr. Bilgrami, present country manager of BCCI's Panama office; and Mr. Dean, present country manager of BCCI's Colombian office. We also met with two subordinate officials at BCCI's Miami

office: a second Mr. Rizvi and a Mr. Hassan. What follows is a report from notes taken by Mr. Sanders during the course of meetings with these BCCI officials.

August 16, 1988

In our initial meeting with BCCI officials in Miami, Mr. Altman began by explaining that we had come to Miami because of an investigation by the Senate Subcommittee on Terrorism, Narcotics, and International Operations of the Senate Foreign Relations Committee, into international drug trafficking and money laundering. Mr. Altman stated that the Senate Subcommittee had conducted various hearings, some private and some public. BCCI had been mentioned in these hearings with respect to money laundering in Panama and Colombia and counsel for the subcommittee had issued four subpoenas to BCCI and its personnel.

Two of the subpoenas are to BCCI and in its corporate capacity. One subpoena is to Mr. Shafi and one to Mr. Awan. Mr. Altman stated that we had come to speak with the BCCI officials who would be most knowledgeable about this matter in order to permit BCCI to respond to the subpoenas. Mr. Altman stated that conversations between the BCCI officials and Clifford & Warnke would be privileged and confidential.

Jack Blum, the Counsel for the Foreign Relations Subcommittee, had described earlier to Mr. Altman and Mr.

Kovin BCCI's alleged involvement. First, Mr. Blum had received information that proceeds from the sale of drugs had been placed with BCCI with instructions that BCCI should manage these monies by investing them in securities or in the money market. BCCI, in other words, was believed to be involved in portfolio management for drug dealers. In particular, General Manuel Noriega is believed to have a close relationship with BCCI and it is believed that BCCI managed illegal drug assets accumulated by General Noriega. It is believed that General Noriega assisted BCCI in obtaining a license to conduct banking operations in Panama and that, in exchange, BCCI was to manage General Noriega's funds and make them difficult to locate.

Mr. Blum stated that there was also some reason to believe that BCCI is engaged generally in the business of money laundering. It is believed that BCCI accepts cash deposits which, once converted into bank ledgers, cannot be traced. The laundering works like this: deposits of cash are placed in BCCI's Panama bank. These cash deposits are then delivered to the Central Bank of Panama and subsequently transferred to accounts outside of the Panama where they can be drawn upon by the drug dealers.

It is Mr. Blum's understanding that people know generally who the drug dealers and money launderers are. Mr. Blum believes that both Mr. Awan and Mr. Shafi are likely to have intimate knowledge of this system of money laundering and

are likely to know that the people making cash deposits of money in Panama and transferring those funds to the United States are dealing with drug money. Mr. Blum believes that there must be documents in Miami that would support the theory that large amounts of cash had been deposited in Panama and transferred to Florida. This would explain why the subpoenas were issued to the Miami office of BCCI and to officials based there.

Following this general introduction by Mr. Altman, Mr. Rizvi, the head of BCCI's activities in the Western Hemisphere, described the policy of BCCI. He stated that it is the policy of the bank not to be involved in money laundering. Further, he stated that, contrary to Mr. Blum's belief, BCCI does not manage funds. It is only in the business of taking deposits and making loans.

Additionally, Mr. Rizvi said that BCCI banks deal primarily with local currency, not with U.S. dollars. The bank is not a dollar fund, notwithstanding the fact that the balance sheet is expressed in U.S. dollars. Some local banks generate U.S. dollars and other foreign currency. That liquidity is to deposited by BCCI's banks with the central banks in exchange for local currency.

Mr. Awan added that BCCI has operations in various countries, Colombia and Panama in particular, where the currency changing hands in the market is both white and black. Consequently, one cannot be absolutely certain that

some money passing through the bank is not black money. It is the policy of the bank, however, not to handle drug money. If the bank learns or suspects that drug money is involved, it is the policy of the bank to distance itself from those customers.

Mr. Rizvi then stated there are files in the Miami office of loans of more than one-half million dollars made to Panamanians and Colombians in those countries. Additionally, there are a large number of depository accounts in Miami in the names of Panamanians and Colombians or in the names of corporations incorporated in those countries. These are generally rather small depository accounts, however.

Mr. Rizvi then stated that BCCI has no professional relationship with General Noriega. Previously, however, BCCI did maintain depository accounts for General Noriega in London and issued credit cards.

Mr. Altman then requested that the group review the four subpoenas that had been issued. Two subpoenas are directed at corporate entities: one to BCCI Overseas Limited in Miami, one to BCCI International, Limited in Boca Raton, a branch of the above. Mr. Altman then proceeded to discuss the document requests contained in these corporate subpoenas.

Request No. 1 is for documents involving the management of assets for General Noriega. The request was for management of assets and not a request for depository accounts. Mr. Altman asked if Overseas (Limited) had any documents responsive to this request. The BCCI officials all

- 6 -

said no. All bank documents relating to Noriega would be abroad in S.A. offices. Only Mr. Awan would have any detailed knowledge of any such documents.

Request No 2 is for documents concerning the holding of assets as custodian for General Noriega. Again, the only documents which would be conceivably responsive to this request would be documents relating to General Noriega's depository accounts at BCCI's S.A. offices in Europe. Only Mr. Awan would know what documents existed.

Request No. 3 is for documents concerning corporations, partnerships, and other business entities under the direction and control of General Noriega. No such documents are believed to exist.

Document Requests Nos. 4, 5, and 6 concern the management of assets for Michael Harari, the holding of assets for Michael Harari and for corporations, partnerships, and other business entities under the direction and control of Michael Harari. The BCCI officials stated that Mr. Harari is thought to be an arms dealer, a former member of the Israeli Secret Service, and a friend of General Noriega. BCCI has no documents responsive to these requests regarding Mr. Harari.

Request No. 7 concerns documents relating to the management of assets for private clients in Colombia. Mr. Altman explained that Mr. Blum had advised that documents only need be produced for accounts of Panamanian clients in excess of five million dollars. The BCCI officials stated that there

- 7 -

would only be a small number of accounts in Florida in the names of Colombians or Colombian corporations that were in excess of five million dollars, perhaps only four or five. These assets are not managed by the bank, however. They are only depository accounts. The bank does not manage portfolios or trusts. The responsive documents will be obtained.

Request No. 8 concerns all documents relating to the holding of assets as custodian for private clients in Colombia. With the exception of the aforementioned four or five depository accounts, no documents would be responsive.

Document Request No. 9 concerns all Panamanian clients for whom the Bank manages assets. Mr. Awan stated that there are perhaps only two accounts in excess of five million dollars. The records for both of these accounts are in Panama. One of the accounts is for an Egyptian perfume manufacturing company based in Panama. The second, is for an American oil drilling company incorporated in Panama. Production of the records of either of these accounts would violate Panamanian bank secrecy law.

Mr. Altman asked if any Colombians had accounts in Panama. The BCCI officials stated that any such accounts would be below one million dollars.

Document Request No. 10 concerns all documents relating to Colombian clients for whom the bank manages assets. The BCCI officials reiterated that BCCI does not manage assets. Further, Mr. Awan stated that he did not

believe that there were any accounts in Colombia in excess of five million dollars, but that he would have to check one or two accounts to be certain.

Document Request No. 11 requests all trusts documents respecting trusts which have Panamanian beneficiaries. The BCCI officials reiterated that BCCI does not manage trusts.

Mr. Altman then stated that the Foreign Relations Subcommittee wanted to learn how money laundering takes place. The Subcommittee wants to reach the assets of drug dealers.

Mr. Altman asked Mr. Bilgrami whether there were large cash deposits at the Panamanian office. Mr. Bilgrami stated that once or twice a month there might be cash deposits of two hundred thousand dollars. Mr. Altman asked how many accounts would receive cash deposits of that nature. Mr. Bilgrami stated that there were probably ten or fifteen such accounts, taking both Panamanian branches together. Mr. Altman asked if BCCI knew the people who make these cash deposits. Mr. Bilgrami stated that they were all believed to be legitimate business people. Mr. Bilgrami stated that after cash is deposited in the Panamanian office, it is transferred to the Central Bank of Panama in exchange for local currency. BCCI's cash limit with the Central Bank is seven million dollars.

Mr. Bilgrami stated that it is common knowledge that some people are money brokers. For example, Brinks might come

in with large amounts of cash. BCCI would not accept such large cash deposits from unknown sources and would turn them down flat. Other banks, however, are known to accept money from these types of money brokers. These banks include Citibank, Boston, UBS, Swiss Bank, and Union Bank.

Mr. Altman asked if BCCI could document who we turned down. Mr. Bilgrami stated that there would be no such documentation. The bank would merely refuse to accept these large cash deposits.

With respect to Panamanian corporations, they are generally incorporated by lawyers and the principals are not known. It is the bank policy, however, to deal only with reputable law firms.

Mr. Bilgrami stated that there might have been a dozen accounts in which the client would bring in cash in a suitcase. These depositors of cash could have been money launderers. Money launderers are not drug dealers themselves, but their business is interrelated with drug dealing. The process works like this: dealers who buy drugs from farmers in Colombia must pay the farmers in local currency. They go to money changers in Panama and pay dollars in exchange for pesos. The money changers in Colombia thus accumulate large sums of dollars. These dollars are eventually deposited in Panama and then transferred to the United States.

Mr. Altman asked what was the dollar volume in cash deposits done in the past eight years. The BCCI officials

- 10 -

were not sure, but stated that it would probably be about ten million dollars a month. Citibank probably took more than fifty million dollars per month and there are four or five Colombian banks that may take thirty to fifty million dollars per month.

Mr. Altman asked if there were any documents that would reflect these cash transactions. The officials stated that there would be deposit slips in Panama that would identify the depositor and there would be a record of how many dollars were transferred each day to the Central Bank of Panama. Only the records in Panama would distinguish which deposits were in cash and which were in check.

Mr. Altman, Mr. Kavin, and Mr. Sanders then met privately with Mr. Awan. Mr. Altman inquired as to Mr. Awan's relationship General Noriega. Mr. Awan stated that BCCI had made an application for a branch office in Panama which had been turned down by the Bankers' Association, the chairman of which was from Chase Bank. Basically, the Bankers' Association black-balled the application of BCCI. This occurred before Mr. Awan joined BCCI.

When General Noriega was visiting London, BCCI officials, including Mr. Awan, took General Noriega and the Panamanian Ambassador in Paris out to dinner. Later, some BCCI officials from London went to Panama to meet with General Torrijos. BCCI's application to open a branch office in Panama was subsequently approved and that office was opened in the latter part of 1980.

- 11 -

Mr. Awan was posted at the Panamanian office in October of 1981. Mr. Awan then met General Noriega again. Part of Mr. Awan's duties with the bank was to cultivate important clients. Consequently, he developed a social relationship with many high ranking people in the government, including General Noriega.

In 1982, General Noriega asked Mr. Awan for an account to be opened for Visa card purposes. An account was opened in London. Originally the account held between one hundred thousand and one hundred and fifty thousand American dollars. General Noriega had no account in Panama at that time or at any time.

Whenever General Noriega wanted to deposit money in his London account, he would give money to Mr. Awan who would wire the funds to London. Mr. Awan would wire the funds anonymously, without giving the depositor's name or even an account number. Mr. Awan would simply call London and inform London that a deposit for a certain amount of money would be wired and that the money should be put in General Noriega's account.

General Noriega's wife also opened an account with her three daughters with S.A. in London. General Noriega and his wife then begin to make cash deposits of one hundred thousand, one hundred and fifty thousand, or five hundred thousand dollars in cash, sometimes in Central Bank checks. Mrs. Noriega also opened an account in Paris.

- 12 -

Mr. Awan got to know General Noriega personally. General Noriega came into power in 1983 and Mr. Awan got to know him even better after that.

Mr. Awan was then transferred to BCCI's office in Washington. General Noriega would sometimes call him on the telephone and tell him to make cash payments to someone or to make hotel or plane arrangements. Mr. Awan would pay the total hotel and airline bills and General Noriega would subsequently wire money to Mr. Awan to reimburse him.

The maximum deposit relationship with General Noriega and his family was approximately twenty-two million dollars. The maximum deposit at one time was approximately one million dollars in cash. The cash would be brought to Mr. Awan with instructions to transfer it to London. After Mr. Awan had been transferred to the United States, General Noriega would travel to New York and give Mr. Awan cash to reimburse Mr. Awan for various advances that Mr. Awan made on behalf of General Noriega.

On several occasions Mr. Awan traveled with General Noriega. On one occasion, Mr. Awan travelled with General Noriega from New York to Andrews Air Force Base. Mr. Awan would also see General Noriega in London and in Paris.

General Noriega's banking relationship with BCCI was strictly a depository relationship. BCCI never invested General Noriega's funds. Sometimes, however, General Noriega would withdraw funds from the London account and make his own investments. For example, he bought an apartment in London and in Paris.

The last cash deposit made by General Noriega into the London account was early last year.

After Mr. Awan was transferred to the U.S., he would travel to Panama every four months to see General Noriega. In addition, General Noriega would meet Mr. Awan in the United States. Mr. Awan would deliver travel tickets to General Noriega.

Mr. Altman asked Mr. Awan whether we knew the source of General Noriega's funds. Mr. Awan stated that it was common belief in Panama that General Noriega profited from bribes and graft. At that time, however, there was no reason to believe that the cash deposited in the London account had any relationship with drug dealing.

Mr. Altman then asked if General Noriega had any relationship with other banks in Panama. Mr. Awan said that General Noriega only dealt with BCCI. Mr. Altman asked if Mr. Awan believed that General Noriega had assets other than the twenty million dollars deposited in BCCI's London bank. Mr. Awan stated that he thought that General Noriega has several Swiss bank accounts, but that the amounts are small.

One way that General Noriega would acquire money was through payments from political appointees. Every Panamanian consulate has political appointees. In order to get a post in the diplomatic corps overseas, Panamanians must pay money to the person who appoints them to those posts. Under this system, General Noriega would receive considerable sums of money from political appointees.

- 14 -

Mr. Altman asked Mr. Awan about General Noriega's involvement in drug trafficking. Mr. Awan stated that General Noriega had been hard on drug use and that there were not many drugs in Panama. Mr. Awan did not believe that General Noriega was himself a drug dealer. Mr. Awan stated, however, that he did not think that General Noriega would be above taking bribes from those involved in the drug industry.

When General Noriega's current troubles began, General Noriega asked that his account at BCCI's London office be transferred to BCCI's headquarters in Luxemborg. This occurred in early 1988. General Noriega later requested that the money be sent to Panama. Mr. Awan told General Noriega that the money would be less safe in Panama. General Noriega continued to request that the money be transferred to Panama and ultimately BCCI did transfer General Noriega's money to the Banco National. This occurred within the last week or ten days.

Mr. Altman then explained to Mr. Awan the nature of the allegations that had been made about Mr. Awan. The Foreign Relations subcommittee believed that during 1987 or 1988, Mr. Awan travelled extensively to reorganize General Noriega's portfolio holdings to make it difficult for the authorities to locate or seize those funds. Mr. Awan said that this was untrue and that he never made any investments for General Noriega.

- 15 -

Mr. Altman asked if General Noriega ever went on any spending sprees. Mr. Awan said that General Noriega did not, but that his wife occasionally did.

Mr. Altman asked what documents exist that would track General Noriega's account in London. Mr. Awan said that there were time deposit receipts, but that these only had account numbers. The branch in London would send these time deposit receipts to Mr. Awan and Mr. Awan would take them to General Noriega. In London there would be account opening forms plus account statements month-by-month. Additionally, there would be statements of Visa accounts. Mr. Altman then asked if Mr. Awan felt that he was at any personal risk. Mr. Awan stated that he felt that he was at a personal risk with respect to General Noriega because General Noriega would be angry if Mr. Awan disclosed the existence of the \$20 million dollar account in London.

Mr. Altman asked if others could testify about Mr. Awan's relationship with General Noriega. Mr. Awan stated that there would be any number of people who would have observed Mr. Awan with General Noriega on various occasions. No one outside of BCCI would know about the twenty million dollar account in London. However, the existence of such an account could be surmised. Moreover, records would show that BCCI paid various bills on behalf of General Noriega.

With respect to the London account, Mrs. Noriega held about five million dollars and General Noriega fifteen

million. Mrs. Noriega would make cash deposits. This cash was probably income paid to her by political appointees at consulate posts.

Mr. Altman then questioned Mr. Awan with respect to document requests directed to the two corporate entities regarding Mr. Awan's travel records, telephone records, and compensation. Mr. Awan said that there would be records, of his travel and of his telephone communications. His passports would indicate travel. Additionally, the Bank would have ticket vouchers. Mr. Awan said that he would also have a record of all of his salary slips. Mr. Altman commented that the investigators think that Mr. Awan is likely to have large performance bonuses.

Mr. Awan mentioned in confidence that he had received certain transfers of money from his father in Pakistan. These transfers were illegal transfers under Pakistani law. He had been accepting these transfers since 1984. The total of the transfers would be three hundred thousand to four hundred thousand dollars.

Mr. Awan stated that he had been filing U.S. tax returns since 1984.

Mr. Awan stated that the bank had not knowingly engaged in money laundering.

Mr. Awan stated that the bank had no relation with Mr. Harari.

With respect to money laundering, Mr. Awan stated that between 1981 and 1984, the bank probably received five million dollars in questionable cash deposits, and that after 1984 the bank received very little cash deposits. Mr. Awan stated that many deposits by money changers were legitimate, but that Colombians were not allowed to keep dollar deposits outside of Colombia. Most money changers are Colombian, some are Venezuelan.

Mr. Altman asked Mr. Awan if Mr. Shafi, the head of BCCI's Miami office, was aware of the Noriega account in London. Mr. Awan stated that Mr. Shafi was aware of this account but that he did not know the amount.

Mr. Awan stated that everyone knew who the big Colombian drug dealers were. These drug dealers would work through the Colombian banks. UBS and Citibank were involved in a major way with the Colombia drug dealers. BCCI did not work with these drug dealers.

Mr. Altman, Mr. Kavin, and Mr. Sanders then met with Mr. Shafi, the head of BCCI's Miami office. Mr. Shafi says that he was with BCCI from the very beginning. He left the United Bank in 1972 and joined BCCI on January 1, 1973. Even before officially joining BCCI in 1973, Mr. Shafi worked for BCCI. When he officially joined the bank in 1973, he joined as General Manager and Director of the National Bank of Oman. He stayed there for ten years until 1983, when he was posted to Miami. He is now responsible for all of Latin and Central America, including Panama and Colombia.

Mr. Shafi stated that he would sometimes travel to these countries. He said that all loans over one-half million dollars had to be approved by him and that loans over one million dollars had to be approved by the central credit committee in London. Loans above five million dollars had to be approved by the board. Mr. Shafi stated that all strategic planning for Central and South America occurred at the Miami office.

Mr. Altman inquired as to what records were kept in Miami. Mr. Shafi stated that all records with respect to credit and loans, that is, all records of loans of over one-half million dollars in Central or South America, would have records in Miami. There would be no records of depositors in those countries with respect to deposits made in Panama or Colombia. The Miami office would only have total figures of deposits. There are perhaps fifty thousand to sixty thousand total depository accounts in the region.

Mr. Altman asked Mr. Shafi if he had any relationship with General Noriega. Mr. Shafi said that he met Mr. Noriega once or twice in Panama when Mr. Shafi first came to the Miami office. Mr. Awan had arranged for those meetings and they were just courtesy calls. Mr. Shafi said that he had no other dealings with General Noriega. Mr. Shafi also said that he knew nothing about Mr. Harari.

Mr. Altman then questioned Mr. Shafi about any travel, telephone, or compensation documents that Mr. Shafi

had. Mr. Shafi said that the bank files would have all of these records.

Mr. Altman asked Mr. Shafi about any large sums of cash that may have been deposited in Panama. Mr. Shafi said that he had no personal knowledge of any large deposits of cash in Panama.

Mr. Altman asked Mr. Shafi why a subpoena had been issued in his name. Mr. Shafi stated that he did not know, but suspected that it was because he was the head of operations in the region. Moreover, all credit files for the region were kept in Miami.

Mr. Altman asked Mr. Shafi whether he had any substantial fringe benefits. Mr. Shafi said no. He was supplied with a company car and had medical coverage through insurance, but that was all. There would be complete records of all of his business expense accounts. Mr. Altman asked if Mr. Awan was provided with a company car. Mr. Shafi said that Mr. Awan had no car, only a salary.

Mr. Altman, Mr. Kovin, and Mr. Sanders then met with Mr. Bande Hassan. Mr. Hassan has been with BCCI for four years. He recalls that in October of 1987, Mr. Abedi spoke to BCCI officials at the Grand Bay Hotel in Miami. Mr. Abedi told the bank officials that they could not blacken the name of the bank by dealing with drug dealers or drug money and that the bank would take serious action against any bank official who did so. There were perhaps four hundred people

at this meeting. Mr. Altman wanted to know if there were minutes of that meeting. Mr. Hassan said that he thought there might be either minutes or an audio tape.

Mr. Altman asked whether there were any depository accounts in Florida of Colombia or Panamanian clients that exceeded five million dollars. Mr. Hassan said he thought that there would not be many and that he would compile a list.

We then met with Mr. Bilgrami, the present county manager for Panama. Mr. Bilgrami has been the country manager in Panama since 1985. BCCI has two offices in Panama, one in the Free Zone and one in Panama itself. Mr. Bilgrami stated that the bank in Panama performed two major functions. The first is to accept deposits. The second is trade finance, that is, short term lending. Mr. Bilgrami stated that he can lend only ten thousand dollars without security and only fifty thousand dollars with security.

With respect to deposits, Mr. Bilgrami stated that deposits in Panama come from different countries and come in the form of either cash or bank transfers. Mr. Bilgrami stated that there are many Panamanian registered companies. A company can register in Panama in twenty-four hours. In some companies, the owners are known, in others they are not. BCCI only deals with corporate clients when they are recommended by reputable attorneys. With respect to Colombian accounts, BCCI in Panama will only deal with those accounts if the holders of the accounts are recommended by BCCI's Colombian bank officers.

In Panama, it is not a crime to accept cash deposits, but BCCI has a limit of six million dollars. Mr. Altman asked Mr. Bilgrami how much cash would come into BCCI's Panamanian office each month. Mr. Bilgrami stated that in 1986 and in 1987, perhaps ten or fifteen million dollars in cash were deposited each year, over a million dollars per month. In any case, the bank records would contain this information. The deposit tickets would show this and the account statement would also indicate whether the deposits were in cash or by check.

Mr. Altman asked Mr. Bilgrami if any of the accounts in Panama exceeded five million dollars. Mr. Bilgrami said no. The maximum account in Panama was probably about two million dollars.

Mr. Bilgrami stated that BCCI's Panama bank closed all money changer accounts in 1986.

August 17, 1988

Mr. Altman, Mr. Kavin, and Mr. Sanders met first with Mr. Rizvi. Mr. Altman summarized the general state of affairs. He stated that, at the present time, there were three valid subpoenas and one invalid subpoena. The subpoena for Mr. Awan was invalid because it was not served and Mr. Awan's first name was incorrectly stated. [Counsel for the Foreign Relations Subcommittee later telephoned us and confirmed their interest in the documents of Mr. Awan, the BCCI officer].

- 22 -

Mr. Altman stated that we were informed that the only responsive documents held by Mr. Shafi were his telephone, travel, and compensation records. BCCI has similar documents with respect to Mr. Awan and Mr. Altman asked that Mr. Awan go to Washington and begin to collect these documents.

Mr. Altman observed that neither Mr. Shafi or Mr. Awan had been requested to testify.

Mr. Altman commented on the existence of the Noriega account in London, but stated that the subpoenas requested documents in the possession of Overseas. We were informed that there would be no documents in Panama with respect to the Noriega account in London. They were all transactions of S.A. The wire transfers of money from Panama to London had no names or account numbers.

Mr. Altman stated that the major interest was Mr. Awan's relationship with General Noriega and the Noriega depository account in London. We are advised that there could be unfortunate implications for the bank if we were to produce documents with respect to General Noriega's London account. Those records may be protected by English or other foreign law, an issue we will check. If those documents are produced, BCCI personnel in Panama could be at risk. Moreover, Mr. Awan feels that if he were to disclose the London bank account, he could well be in personal danger.

Mr. Altman mentioned that perhaps we should consider separate counsel for Mr. Awan. Mr. Altman also stated that we would produce Mr. Awan's documents even though he was not subpoenaed.

Mr. Altman stated that the bank had a potential political exposure as a result of the receipt of substantial dollar deposits from General Noriega. Additionally, there is the concern with respect to money laundering, although the bank does not believe any laundering occurred knowingly. We have not been requested to produce any documents with respect to money laundering. As to money laundering, we could explain it may have occurred. We could explain that we took some few millions dollars from unknown sources and that, in addition, we dealt with money changers. We could state, however, that it was the policy of the bank not to deal with drug money and, in any case, the amount of cash we received was insignificant compared to other banks.

Mr. Altman suggested that we seek to produce documents in the first week of September. By then, we would have to formulate a position with respect to Mr. Awan. Mr. Altman mentioned that in the coming week Mr. Kovic might make a trip to Panama and/or Colombia. This trip would reassure the subcommittee that we were diligent in our efforts though documents outside the country are not requested.

Mr. Rizvi then presented his perspective of the general situation. He stated that our balance sheets indicate that the bank does no trust work, thus there would be no documents responsive to the subpoena requests regarding management of assets.

Mr. Rizvi stated that balance sheets for Panama and Colombia are maintained at BCCI's Miami office. Additionally, there are two types of information in Miami with respect to Panamanian and Colombian clients. First, there are records of depository accounts of Panamanian and Colombian clients where those accounts are at offices in Florida. Second, there are records of all loans made to Panamanians and Colombians that exceed five hundred thousand dollars.

At the Miami office, there is also a cash book that indicates the cash flow in Panama for 1987 and 1988. Mr. Altman suggested that we consider producing that cash book. Such production may not violate Panamanian bank secrecy laws. The cash would reveal to the subcommittee that BCCI's Panamanian office did not receive nearly as much cash deposits as the subcommittee has been led to believe.

Mr. Rizvi went on to state that it has always been the policy of the bank to stay away from drug money.

Mr. Altman commented that Mr. Rizvi would be effective in discussions with the counsel to the subcommittee and we should consider having Mr. Rizvi speak with Mr. Blum.

Mr. Altman then suggested various alternative approaches to the subpoena requests. First, either Mr. Awan or Mr. Rizvi could go and speak with the subcommittee's counsel. Second, we could produce certain documents, but not with respect to the Noriega account, and Mr. Awan could refuse to testify. The Committee would be advised that if the bank were to disclose the Noriega account, either by documents or through Mr. Awan's testimony, General Noriega might revoke the bank's license, arrest BCCI personnel, and kill Mr. Awan.

We then met with Mr. Feroze Dean, the President of BCCI's subsidiary bank in Colombia. Mr. Dean explained that we bought a bank in Colombia in June of 1983, the year before he arrived. Initially, we acquired 49% of that bank and later gained complete control in 1988 when the majority owners went bankrupt. The majority owners got special permission from the government to sell their interest to us.

Mr. Altman asked Mr. Dean what kind of business BCCI engaged in Colombia. Mr. Dean responded that the main activity was international commerce and local lending. He said that BCCI has thirty branches in Colombia. The lending activity is related to import and export work. The exports are coffee, flour, and bananas. The imports are raw materials. BCCI has fifty-five thousand accounts in Colombia.

Only one or two of the balances exceed three million dollars. There are no accounts above five million dollars.

The two largest accounts are government accounts: the Colombian Port Authority and the Bogata treasury.

There are no dollar accounts in Colombian. All accounts are in pesos, the local currency.

Mr. Dean stated that BCCI is very suspicious of people who wish to transfer large sums of money out of Colombia. On one occasion someone wished to transfer one million dollars per week out of the country. BCCI refused to do this. BCCI's Colombian bank does transfer certain cash to Nassau to avoid the high Colombian reserve requirement on loans. Financing is expensive in Colombia because a reserve of 16.5% must be paid to the National Bank. Accordingly, BCCI makes dollar deposits in Nassau that are security for loans. For this purpose, clients wire funds to Nassua. These are not big dollar amounts, however.

Mr. Altman asked Mr. Dean how active was BCCI in encouraging money changers to deposit their dollars in Panama. Mr. Dean said that we did not encourage this activity at all.

We then met again with Mr. Awan. We began by showing him the chart entitled "The Organization of The Criminal Empire." This chart, which was an exhibit at the hearings held by the subcommittee, provides the names of individuals, companies, and banks that are believed to play a role in General Noriega's drug empire. BCCI, Swiss Bank, Banco Cafetero, and Inter-Bank are listed as banks involved in the drug empire.

The first column on this chart lists individuals believed to be part of the criminal empire. Mr. Awan was familiar with four of the seven names listed. Mr. Awan said that Enrique Preteit was in the jewelry business and made deposits at BCCI. Those deposits totaled one hundred thousand dollars. Additionally, we gave him a three hundred thousand dollar line of credit based upon the one hundred thousand dollar deposit.

Mr. Awan said that Richard Bilonick owned a cargo airline. One of his planes was caught in the U.S. with drugs on board. He approached Mr. Awan to open a bank account. Mr. Awan refused. He later did open an account by depositing a one million dollar check. He asked for a loan for three million dollars and we gave him a loan of seven hundred and fifty thousand dollars.

Mr. Awan said that Carlos Wittgreen was a close associate of General Noriega.

Finally, Mr. Awan stated that he was familiar with Cesar Rodriguez. Rodriguez had a large account with BCCI. He is now dead and stills owes the bank three million dollars. He was in the restaurant and night club business and also had a limousine business. Additionally, he had an aircraft spare parts business called Car Corporation. Mr. Awan believes that General Noriega had Mr. Rodriguez murdered.

Under the second column on the chart, Military Operations Group, Mr. Awan said that he was familiar with the

- 28 -

names of the ten generals listed in that column and was acquainted with some of them. None of them had accounts with BCCI, however, but the wife of Marcos Justines had a small account at BCCI's Panamanian office.

Mr. Awan stated that he was familiar with Carlos Duque, whose name appears on the last column of the chart, entitled Private Group of "Legal" Businesses.

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NOTES OF MEETING WITH JACK A. BLUM,
SPECIAL COUNSEL TO THE SENATE FOREIGN
RELATIONS COMMITTEE ON SEPTEMBER 9, 1988

On September 9, 1988 Mr. Robert Altman together with Mr. Robert Sanders met with Jack A. Blum, Special Counsel to the U.S. Senate Foreign Relations Committee to discuss the subpoenas issued by the Committee to BCCI. Ms. Kathleen Smith of the Committee Staff also attended the meeting. The meeting commenced at 2:30 and lasted until shortly after 4:00 p.m.

After brief introductory remarks, Mr. Blum stated that it was his understanding that on September 14, 1988 BCCI would make a partial production of documents requested in the subpoenas issued by the Committee. Mr. Altman responded that the production of documents on September 14, 1988 would consist - as per our prior discussion with the staff - of documents responsive to the subpoenas that were located in BCCI's Florida office which served as the Regional Headquarters for Latin American and the Caribbean. Mr. Altman stated that he, Mr. John Kovic, and Mr. Sanders had traveled to Miami in August where they spent several days meeting with BCCI officials at the regional office. The BCCI officials were said to include Mr. Shafi, who was in charge of the region, and the country managers of both Panama and Colombia.

Mr. Altman stated that he briefed these officials on the current investigation and reviewed with them copies of the

- 2 -

subpoenas. All documents responsive to the subpoenas located in Miami were then collected.

Mr. Altman stated that officers' comments and the documents produced from the Miami office present a picture that is quite inconsistent with what the Committee had been told. First, we had earlier been informed that the Committee was concerned that known drug dealers would place large sums with BCCI, e.g. -- \$20 million or more -- and that BCCI would invest and manage these assets on behalf of these persons. Mr. Altman told Mr. Blum that BCCI does not have a trust department and generally is not in the business of managing money for customers. Moreover, BCCI does not have large depository relationships in Colombia and Panama. The deposit accounts in those countries are relatively small. The same is true for deposit accounts of Panamanians or Colombians that are maintained at BCCI's agency offices in Florida. Finally, Mr. Altman stated that while the names of reputed drug dealers are known to our country managers, BCCI does not do business with any of them.

Mr. Altman then stated that BCCI officials had heard rumors about the handling of drug money by other banks. BCCI had been approached for several occasions and offered lucrative commissions to accept large cash deposits, but the bank always refused.

Thank you very much.

Mr. KATZENBACH. Thank you very much, Mr. Chairman. We appreciate it.

Mr. DAVIS. Thank you.

Senator KERRY. If I could ask Mr. Brian Smouha to take the table, if you could stand by for a moment, we will sort of sit in suspended animation for a second.

[A brief recess was taken.]

Mr. Smouha, thank you very much for traveling the distance to be here with us today. We appreciate it. I hope we will not keep you too long. But we certainly welcome your testimony. You are sitting in the middle of this cauldron and have a great deal, I think, that you can share with us about the current status of BCCI and what we could look to as we proceed here.

Is there any opening statement that you wish to make or summary of comments?

**TESTIMONY OF BRIAN SMOUHA, COURT APPOINTED FIDUCIARY
FOR BCCI HOLDINGS (LUXEMBOURG) SA AND BANK OF CREDIT
AND COMMERCE INTERNATIONAL, S.A., LONDON, ENGLAND**

Mr. SMOUHA. Thank you, Mr. Chairman.

Senator KERRY. Identify yourself fully for the record, if you can.

Mr. SMOUHA. Yes. My name is Brian Smouha. I'm a chartered accountant by profession.

Senator KERRY. Please, pull the mike a little over.

Mr. SMOUHA. And the senior financial institution partner of Touche Ross in London.

I appear today in my capacity as a fiduciary appointed by the District Court of Luxembourg to take charge with others, of the affairs of BCCI Holdings (Luxembourg) S.A. and one of its two principal operating subsidiaries, Bank of Credit and Commerce International S.A., the other subsidiary being BCCI Overseas.

I'm here as well on behalf of my fellow court-appointed fiduciaries. I filed a statement with the subcommittee, which I would appreciate if that could be placed on the record.

Senator KERRY. The full statement will be placed in the record.

Mr. SMOUHA. I wonder, Mr. Chairman, if I may just draw attention to a number of highlights in that statement.

Senator KERRY. That would be very helpful.

Mr. SMOUHA. Each of us are appointed by courts and are subject to the supervision and the authority of those courts which we serve. Our goal is to determine in conjunction with and with the cooperation of the courts in various jurisdictions, and that of course includes the courts in the United States, the most appropriate and orderly way in which the assets of the BCCI group can be realized and the maximum amount made available for distribution on the basis of equality to innocent creditors and depositors of the various entities of BCCI worldwide.

While our responsibility is to use the resources in the liquidation estates to maximize recoveries to be made available to creditors and depositors, as far as we're able consistent with those responsibilities, we endeavor to cooperate with numerous investigative authorities in a number of countries.

BCCI operated in some 69 countries. The scope of the task which faced us when we started on July 5 was made quite clear. On that day, regulators in Luxembourg, the Cayman Islands and the United Kingdom closed the bank. When the Bank of England closed the branches, they notified the regulators worldwide of the closure.

And the central banks and regulators in each of those countries moved in and where appropriate local laws existed, they applied them to the branches, some closing the branches and placing them under local liquidation and others keeping them open.

Some central banks or regulators were uncertain as to what action to take, but they still took control of the local branch operations by use of custodians and each one with differing powers. Under the laws of the countries in which we were appointed, a branch is treated as part of the main bank and therefore, we as court appointed fiduciaries of the corporate entities, are responsible for all of the assets and liabilities of the branches worldwide of those entities.

It follows that the results are somewhat complex in practice. Whilst we have responsibility for the liabilities of the branch creditors worldwide, we do not have access to or control of all branch assets and documentation. This conflicting regime of local laws has effectively dismembered the bank, leaving us with responsibility to all creditors, but with no local authority in many jurisdictions.

Today, we are administering the resultant worldwide insolvency in the absence of a worldwide insolvency treaty or agreed principles amongst the various countries involved. Assets must be marshalled and claims defended against or asserted in jurisdictions with vastly differing local laws, cultures, and banking and financial regulations.

Our obligation is to obey the law of each jurisdiction in which we work. This means obeying applicable banker customer confidentiality laws, which in some cases may be enforced with criminal penalties. The task of assessing the consequences of acts under a multiplicity of legal systems and assuring that acts in one do not violate the terms of appointment in another, greatly challenges our capacity to administer the liquidation on a worldwide basis.

The complicated legal environment has required that we seek advice of a large number of lawyers in the various countries in which we work.

Accompanying me today to this hearing is Mr. Michael Crystal, Queen's counsel, who is a leading counsel from England acting on behalf of the court appointed fiduciaries. And with your permission, Mr. Chairman, I would ask when we discuss matters of legal status relating to the liquidation proceedings, if it is relevant, if Mr. Crystal could address the committee briefly, if you wish him to do so.

We entered into a plea agreement with a number of authorities in the United States, which was approved by the United States District Court for the District of Columbia on January 24, 1992. Since the plea agreement was entered, we've been active in working with the Department of Justice, the District Attorney of New York, the Federal Reserve, State banking regulators, as well as with this committee.

We have, on behalf of BCCI, waived all privileges possessed by the bank prior to July 5, 1991, including the attorney-client privilege, the accountant-client privilege and work product protection.

We've been meeting frequently with representatives of the Department of Justice and the District Attorney of New York County to coordinate the issuance of appropriate orders from foreign courts which will permit access by law enforcement officials to documents which cannot now be released, because of foreign confidentiality laws.

Our U.S. and U.K. legal advisors have been working with law enforcement authorities to identify the most appropriate legal steps to undertake to enable us to satisfy the requests which we've been receiving.

The court-appointed fiduciaries have recognized the importance of the United States investigative and law enforcement interests in the BCCI matter. Whilst our duty is not that of law enforcement because we're charged to marshal and maximize assets to compensate creditors, we have devoted substantial efforts and resources to facilitating the efforts of investigators and prosecutors.

Shortly after the closure of BCCI, the court appointed fiduciaries opened discussions with the Government of Abu Dhabi with a view to seeing whether arrangements could be made which would improve and accelerate a return to creditors of the principal BCCI companies.

Draft agreements providing for the implementation of those arrangements were initialed on February 20, 1992. Those provisional agreements were the product of more than 7 months of intensive negotiations. With respect to the negotiating history, I would note that the agreements remain the subject of ongoing discussions and have not yet been approved by the various supervising courts. If approved by the courts, there's still a requirement for the substantial majority of creditors to accept the Abu Dhabi offer before the agreements can go unconditional.

On the litigation front, we have commenced investigations of potential claims against auditors and other professional advisors, as well as against a number of senior key BCCI officials. As you may know, proceedings have been taken in England against BCCI's former auditors for negligence, breach of duty and breach of contract.

Actions taken by central banks and governments to ring-fence assets and to take control of the assets and operations of the branches around the world have hindered our ability to track assets and obtain documentation on a comprehensive worldwide basis. We acknowledge and work within the laws of each country. Indeed, here in the United States, authorities in New York and California, under their State banking statutes, took control of all BCCI assets in those States and are liquidating the BCCI agencies that functioned in those States.

Under those State statutes, they will pay claims of creditors of the U.S. agencies. We understand that, unlike most of the rest of the world, the New York and California agencies have very substantial surpluses and are likely to pay creditors 100 cents on the dollar. The excess funds will be forfeited to the U.S. Government under the plea agreement.

In reviewing our efforts over the last 10 months to perform our job while obeying the law in a fragmented and sometimes confusing legal landscape, I would emphasize for the committee's consideration that BCCI is a global policy problem requiring global policy solutions.

In the absence of such solutions, we have been endeavoring as officers of the courts to maximize the return to innocent depositors and creditors to cooperate with the authorities worldwide and to obey the law wherever we conduct our efforts.

I shall be pleased, Mr. Chairman, to answer any questions which you may have for me.

[The prepared statement of Mr. Smouha follows:]

PREPARED STATEMENT OF BRIAN SMOUHA

Chairman Kerry, Senator Brown and Members of the Subcommittee: My name is Brian Smouha. I am pleased to respond to the Subcommittee's invitation of April 29, 1992, to appear and testify today.

I am a Chartered Accountant by profession and the Senior Financial Institutions Partner of Touche Ross, London. I appear today in my capacity as a fiduciary appointed by the District Court of Luxembourg to take charge with others of the affairs of BCCI Holdings (Luxembourg) SA and one of its two principal operating subsidiaries, Bank of Credit and Commerce International SA. I am here as well on behalf of my fellow Court Appointed Fiduciaries.

I and my colleagues were appointed on or shortly after July 5, 1991, by the District Court in Luxembourg, the Grand Court of the Cayman Islands and the High Court in England to take charge of the affairs of BCCI. Each of us is an officer of the appointing court subject to the supervision and authority of the court responsible for our appointment. I had no involvement with BCCI prior to my appointment.

Our goal is to determine, under the auspices of the District Court of Luxembourg and the Grand Court of the Cayman Islands, and in conjunction with and with the cooperation of, the courts in various jurisdictions (including, of course, the courts in the United States), the most appropriate and orderly way in which the assets of the BCCI Group can be realized and the maximum amount made available for distribution on the basis of equality to innocent creditors and depositors of the various entities of BCCI worldwide. While our responsibility is to use the resources in the liquidation estates to maximize recoveries to be made available to creditors and depositors, as far as we are able consistent with that responsibility, we endeavor to cooperate with numerous investigative authorities in a number of countries.

The collapse of an entity of the breadth and complexity of BCCI has created unprecedented worldwide difficulties. Prior to July 5, 1991, when bank regulatory authorities closed the bank, the BCCI Group, which includes numerous subsidiaries in addition to the principal companies which we represent, operated in some 69 countries. In the words of the present Vice Chancellor, Sir Donald Nicholls, speaking in the High Court in London, the Court Appointed Fiduciaries and the Touche Ross team assisting them have embarked on "a truly gargantuan, mammoth and complex task."

The scope of the task which faced us was made clear almost immediately after our appointments on July 5, 1991. On that day, regulators in Luxembourg, the Cayman Islands and the United Kingdom closed the bank. When the Bank of England notified branches of the bank worldwide of the closure, central banks and regulators in each of those countries moved in, and where appropriate local laws existed, applied them to the branches, some closing the branches and placing them under local liquidation, and others keeping them open. Some central banks or regulators were uncertain as to what action to take, but still took control of the local branch operations by use of custodians with differing powers. Under the laws of the countries in which we are appointed, a branch is treated as part of the main bank and therefore we as Court Appointed Fiduciaries of the corporate entities are responsible for all of the assets and liabilities of the branches worldwide of those entities.

It follows that the results are somewhat complex in practice. While we have responsibility for the liabilities to branch creditors worldwide, we do not have access to or control of all branch assets and documentation. This conflicting regime of local laws has effectively dismembered the bank, leaving us with responsibility to all creditors but with no local authority in many jurisdictions.

Today, we are administering the resultant worldwide insolvency in the absence of a worldwide insolvency treaty or agreed principles amongst the various countries involved. Assets must be marshalled and claims defended against or asserted in jurisdictions with vastly differing local laws, cultures and banking and financial regulations. Our obligation is to obey the law of each jurisdiction in which we work; this means obeying applicable banker/customer confidentiality laws, which in some cases may be enforced with criminal penalties. The task of assessing the consequences of acts under a multiplicity of legal systems, and assuring that acts in one do not violate the terms of appointment in another, greatly challenges our capacity to administer the liquidation on a worldwide basis. The complicated legal environment has required that we seek advice of a large number of lawyers in the various countries in which we work.

In rendering his initial judgment in this matter in England, the then-Vice Chancellor, Sir Nicolas Browne-Wilkinson, (now Lord Browne-Wilkinson), stated that it was "a matter of profound regret to me that there is no International Convention regulating international insolvency. This case, I hope, if it does nothing else, may concentrate people's minds on the necessity of such a Convention. * * * [This case] will require the most difficult and complicated attempts at cooperation between the different national jurisdictions which I hope will be forthcoming."

Your invitation to testify requested that my testimony address several specific issues. Within the constraints of time and the ongoing proceedings presently before the appointing courts on these and other subjects, I will endeavor to address each of them. In this connection, I will refer to portions of the Report to the High Court of Justice in England, dated March 16, 1992, and I offer a copy of that report for the Committee's files. I further offer a copy of a detailed report of our activities which was presented to the High Court on November 29, 1991, and which was given to the Committee sometime ago.

Accompanying me today to this hearing is Mr. Michael Crystal, Queen's Counsel, who is leading counsel from England acting on behalf of the Court Appointed Fiduciaries. With your permission Mr. Chairman, I would ask that when we discuss the legal status of the liquidation proceedings and current developments that Mr. Crystal address the Committee briefly with respect to those matters.

COOPERATION PROVIDED TO FEDERAL AND STATE LAW ENFORCEMENT, REGULATORS AND OTHER UNITED STATES INVESTIGATIONS

With respect to the activities of the Court Appointed Fiduciaries in the United States, as the Committee is aware, the Court Appointed Fiduciaries entered into a Plea Agreement with the United States Department of Justice, the District Attorney of New York and Federal and State regulatory and banking agencies, which was approved by the United States District Court for the District of Columbia on January 24, 1992. The Forfeiture Order entered by the Court pursuant to the Plea Agreement was described by the Attorney General of the United States as the largest criminal forfeiture in history. The Court Appointed Fiduciaries entered pleas of guilty on behalf of BCCI to federal racketeering charges and to several counts of a New York indictment. I respectfully request that a copy of the Plea Agreement and Order of Forfeiture be included in the hearing record.

The Plea Agreement reflects on the one hand the interests of Federal and State law enforcement and on the other the interests of the Court Appointed Fiduciaries to collect, liquidate and distribute the assets of BCCI in an orderly and fair manner consistent with the protection of innocent victims of BCCI. I would acknowledge with thanks your remarks supportive of the Plea Agreement as well, Mr. Chairman.

In accepting the Plea Agreement, Judge Joyce Hens Green stated that the Plea Agreement reflects "extraordinary efforts and amazing cooperation of a multitude of signatories representing a myriad of jurisdictions to fully settle actions against the corporate defendants, which had operated in 69 countries around the globe, and through that plea resolution, to locate and protect all realizable assets of BCCI for the ultimate benefit of the depositors, creditors, United States financial institutions, and other victims of BCCI. The promise of the plea agreement is that those extraordinary efforts, that amazing cooperation, shall continue."

Mr. Chairman, we submit that this cooperation has continued, is beginning to yield significant benefits and promises to continue to do so. Before describing current cooperative efforts, I would observe that the Court Appointed Fiduciaries' cooperation did not begin with the Plea Agreement. The Court Appointed Fiduciaries have been working with law enforcement and investigative personnel in the United States and in other countries since our appointments. For example, we have worked with the Department of Justice under the Mutual Legal Assistance Treaty to provide broad access to all of the documents maintained in the Cayman Islands. As you

know, prior to the Plea Agreement we turned over many thousands of pages of documents to the Committee. Mr. Chairman, you were gracious enough to acknowledge that extensive cooperation in a letter for which I thank you.

Since the Plea Agreement was entered, we have been active in working with the Department of Justice, the District Attorney of New York, the Federal Reserve, State banking regulators as well as with the Committee.

First, we have on behalf of BCCI waived all privileges possessed by the bank prior to July 5, 1991, including the attorney client privilege, the accountant-client privilege, and work product protection. A copy of the written waiver sent to the Department of Justice in accordance with the Agreement, was also sent to the Committee at the same time. This waiver of privilege has already resulted in the release of thousands of documents in the United States, previously protected by privilege and held by prior counsel of BCCI, to law enforcement authorities. We trust that it will prove of assistance to the Subcommittee in securing documents and testimony previously unavailable. In that regard, on Monday of this week, we received some seventy-two boxes of documents from former counsel to BCCI in the United States. As soon as my U.S. legal advisers have had an opportunity to catalogue and copy this large quantity of documents, we will forward them to the Committee.

Second, we have been meeting frequently with representatives of the Department of Justice and the District Attorney of New York County to coordinate the issuance of appropriate orders from foreign courts which will permit access by law enforcement officials to documents which cannot now be released because of foreign confidentiality laws. Our U.S. and U.K. legal advisers have been working with law enforcement authorities to identify the most appropriate legal steps to undertake to enable us to satisfy the requests. To that end we have participated in meetings with, amongst others, the U.K. Home Office and the Serious Fraud Office. We have agreed to join in applications to be made by the Home Office to the Circuit Court in England under the Criminal Justice (International Cooperation) Act. We are advised by the Department of Justice that the Home Office has approved the application and we expect it to be presented shortly.

I am advised that the English statutes under which we are proceeding provide for government to government assistance in the context of criminal law enforcement. Unfortunately, under English law, I am advised that these statutes cannot be used to provide documents for a foreign legislative enquiry. I am told that American grand jury secrecy rules prevent prosecutors from sharing documents with the Committee. Accordingly, following discussions with your counsel Mr. Winer and our U.S. and U.K. legal advisers, we are pursuing alternative procedures under English law which we hope might permit the Committee to have access to documents located in England. Our English lawyers have prepared an application and submitted a report to the High Court with respect to the Committee's request dated April 29, 1992, and I expect that this application will be heard and adjudicated within the next week or two. I believe, and I hope that you will agree, that our work with the Committee, which represents a significant allocation of time and resources, demonstrates our good will and commitment to the important work this Committee is doing.

A third area in which we have been cooperating with law enforcement authorities has been in establishing an international screening mechanism to assure that only innocent depositors, creditors and other victims of BCCI receive distributions and not those whose claims are derived directly or indirectly through violations of laws concerning narcotics, terrorism, money laundering, or from crimes of violence or similar crimes. Here again, our teams have worked cooperatively with United States law enforcement personnel as well as with foreign law enforcement officials to devise an effective mechanism which harmonizes the requirements of the numerous legal systems concerned. After months of research and negotiation, we have reached an agreement in principle with the Department of Justice and the District Attorney which we believe will assure effective cooperation between U.S. law enforcement authorities and the Court Appointed Fiduciaries in screening claims. I would note further that the United States is not the only jurisdiction with which we are working to prevent payment of claims which are the proceeds of wrongdoing. Consistent with the law, we will be working with the United Kingdom National Drugs Coordination Unit and the Anti-Terrorist Branch of Scotland Yard to provide evidence which comes to our attention in the course of our activities that claims are derived from narcotics or terrorist activities.

A fourth area in which extensive cooperation has been undertaken is with relation to the formation of a trust which has the objective of severing any connection between BCCI and First American Bank. I would note that my advisers and I were involved in the negotiations, tried to play a constructive role amongst the parties, and have agreed to place whatever interest BCCI may have in the trust.

Also, we have endeavored in a number of other ways to cooperate with this Subcommittee in its investigations. Immediately after our appointment, at the request of the Subcommittee to hear the testimony of Masihur Rahman, a former BCCI official in London, we assisted in varying the terms of a High Court injunction obtained by BCCI prior to our appointment in order to permit Mr. Rahman to testify before the Committee; our legal representatives, at the request of your staff, have met with and briefed the Subcommittee staff on the status of liquidation proceedings and the Plea Agreement; and as noted earlier, we have provided thousands of documents, the waiver of privilege and have undertaken the application to the High Court of Justice in England.

In summary, the Court Appointed Fiduciaries have recognized the importance of United States investigative and law enforcement interests in the BCCI matter. While our duty is not that of law enforcement—we are charged to marshal and maximize assets to compensate creditors—we have devoted substantial efforts and resources to facilitating the efforts of investigators and prosecutors.

LEGAL STATUS OF LIQUIDATIONS

The legal status of the liquidations at present is as follows:

BCCI SA was placed into liquidation by the District Court of Luxembourg on January 3, 1992. The Liquidators of BCCI SA are myself and two prominent Luxembourg lawyers, Maitre Georges Baden and Maitre Julien Roden.

BCCI Holdings, which was the holding company for the various banking entities in the BCCI Group remains under *gestion controlee* under supervision of the District Court of Luxembourg. *Gestion controlee* is a system for the controlled management of a company by one or more Commissaires appointed by the Luxembourg court. Maitre Jacques Delyvaux, also a prominent Luxembourg lawyer, and I are the Commissaires of BCCI Holdings.

The Grand Court of the Cayman Islands placed BCCI Overseas into official liquidation on January 14, 1992. It had previously been in provisional liquidation. Ian Wight and Robert Axford, partners of Deloitte Ross Tohmatsu in the Cayman Islands and Michael Mackey, a partner of Deloitte and Touche, Canada, are the Official Liquidators of Overseas.

On January 14, 1992, BCCI SA was also placed in liquidation by order of the High Court in England. It had previously been in provisional liquidation since July 5, 1991. The Liquidators in England are four of my partners, Christopher Morris, John Richards, Nicholas Lyle and Stephen Akers.

AGREEMENTS WITH ABU DHABI

You have also asked me to testify regarding agreements initiated by the Court Appointed Fiduciaries and the Government of Abu Dhabi. These provisional agreements are summarized in some detail on the March 16, 1992 report to the High Court in England.

Shortly after the closure of BCCI, the Court Appointed Fiduciaries opened discussions with the Government of Abu Dhabi with a view to seeing whether arrangements could be made which would improve and accelerate a return to creditors of the principal BCCI companies. Draft proposed agreements providing for the implementation of those arrangements were initiated on February 20, 1992. These provisional agreements were the product of more than seven months of intensive negotiations. With respect to the negotiating history, I would note that the agreements remain the subject of ongoing discussions and have not yet been approved by the various supervising courts. If approved by the courts, there is still a requirement for a substantial majority of creditors to accept the Abu Dhabi offer before the agreements can go unconditional.

As part of the package of agreements to be considered by the three courts there are pooling agreements under which the assets of the principal BCCI companies will be pooled. Completion of pooling will enable creditors of each entity to receive the same *pro rata* distribution in respect of their admitted claims to the extent permitted by local law. The pooling agreements will also permit the fiduciaries appointed worldwide with respect to the various participating entities and branches to work together to collect assets and avoid years of protracted and expensive litigation to untangle the relationships amongst the various entities and branches.

INVESTIGATIVE EFFORTS UNDERTAKEN TO DATE TO LOCATE AND MANAGE ASSETS GLOBALLY

Within days of our appointments a team consisting of some hundreds of professionals was at work in the UK, Grand Cayman, Luxembourg, Abu Dhabi and other

countries. The team was comprised of banking, tax and treasury professionals, corporate finance, corporate recovery and forensic accountants as well as lawyers from a number of jurisdictions. The first task was to bring the operations of the bank under control, then to begin to investigate the complex affairs of BCCI with a view to obtaining information which can be utilized in the recovery of assets.

There are many million pieces of paper (BCCI records and documents) existing in the UK alone. These papers need to be examined for relevance. To date, approximately 80,000 boxes of files have been reviewed worldwide. In the UK approximately 60,000 boxes have been indexed to the file level and 2,000 have been indexed to the document level. In the Cayman Islands, there are approximately 3,000 boxes of documents, all of which have been reviewed and indexed to the file level. There are, in addition, approximately 3,500 boxes of documents in Luxembourg, 80 percent of which have been indexed to the file level. The document review project is ongoing.

Given the enormous quantity of paper, the task of information control and management has been substantial. At the time of our appointments, we found that the control of and indexing procedures for documents in BCCI were poor. As a start to any meaningful investigation, it was necessary to establish a Document Control and Information Management Team to secure and organize the documents and devise effective retrieval systems, at all times balancing our information requirements with the very substantial costs to the estate.

With respect to investigations, our forensic teams continue to undertake substantial investigative efforts which promise to yield value to creditors and depositors. Investigations into the past history of BCCI have been focused on the securing and realization of assets for the benefit of the creditors, as we were directed by the former Vice Chancellor, Lord Browne-Wilkinson. An investigative team has been established with the following terms of reference: to act as the focal point in collecting complaints and allegations of wrongdoing and coordinating the conduct of action to be taken as a consequence; to conduct investigations into specified areas of activity; to perform preliminary enquiries to preserve potential civil claims against certain persons; to interview BCCI exemployees to identify areas of investigation and to obtain further documentation on established areas of investigation; to control the release of BCCI safe deposit boxes; and to investigate customer complaints of account discrepancies. We have commenced investigations of potential claims against auditors and other professional advisers as well as against a number of senior key BCCI officials. As you may know, proceedings have been taken in England against BCCI's former auditors for negligence, breach of duty and breach of contract.

Our loan recovery team is evaluating the realizable value of the loan book on a loan by loan basis, taking account of the size of the loan, the level of documentation, the financial strength of the customer, the security for the loan and the performance history of the loan.

In the vast majority of countries where branches and subsidiaries are situated, the central banks and regulators have appointed officials to protect and control the assets of local branches, including branch documents. The Court Appointed Fiduciaries have attempted in each country to open up lines of communication with the various local appointees, and have supplied the results of their review and offered assistance where possible. We have also sought to obtain information from those local appointees.

Actions taken by central banks and governments to "ring-fence" assets and to take control of the assets and operations of the branches around the world have hindered our ability to track assets and obtain documentation on a comprehensive, worldwide basis. As I stated earlier, we acknowledge and work within the laws in each country. Indeed, here in the United States, authorities in New York and California, under their state banking statutes, took control of all BCCI assets in those states and are liquidating the BCCI agencies that functioned in those states. Under those state statutes, they will pay claims of creditors of the U.S. agencies. We understand that, unlike most of the rest of the world, the New York and California agencies have very substantial surpluses and are likely to pay creditors 100 cents on the dollar. The excess funds will be forfeited to the U.S. Government under the Plea Agreement.

With respect to asset recovery in the United States, our asset recovery teams have worked closely with the Asset Forfeiture Team at the Department of Justice to identify BCCI assets in the United States which are subject to forfeiture. To that end, liquid assets in U.S. banks and other financial institutions in excess of \$300 million have been identified, forfeited and paid into the U.S. Department of Justice Seized Asset Deposit Fund. Cooperative efforts with the Department of Justice, as well as efforts to cooperate with the New York and California state authorities, are ongoing.

DOCUMENTARY EVIDENCE AND WITNESSES WORLDWIDE, INCLUDING ABU DHABI, WITH
RESPECT TO FRAUD, AS WELL AS OTHER MATTERS

The shutdown of BCCI left a highly intricate web of banking and investment operations around the globe to be untangled. The nature of the assignment and the need to identify those areas of the business affected by fraud made it necessary to replace most of the former employees in the head offices of BCCI with Touche Ross personnel. Our forensic team has been working to identify fraud in which there is likely to be realizable commercial value in pursuing the wrongdoers.

Following our appointment, the attention directed to the affairs of the BCCI Group and certain customers by law enforcement and investigative personnel worldwide has been on an exceptional scale. The requests for information by prosecutors and regulators have been substantial in number and wide-ranging in scope. In our continuing efforts to cooperate with all public agencies with an interest in BCCI affairs, substantial resources have been devoted by the regulatory liaison teams that we have established. In the United Kingdom, we have worked and continue to work with the Serious Fraud Office, the Bank of England (Banking Supervision Department), Scotland Yard, the Inland Revenue, Customs and Excise, the National Drugs Investigation Unit, the Department of Trade and Industry, the Office of the Banking Ombudsman and the enquiry being conducted by Lord Justice Bingham. In the United States, we are working closely with the Department of Justice, the District Attorney of New York, the Federal Reserve Board, state authorities as well as this and other Committees of the United States Congress.

With respect to the particular question of access to documents and witnesses in Abu Dhabi, we have, after initially being denied access to those documents, since late summer had access to the Central Credit Division and other Central Office documents in Abu Dhabi for loan recovery purposes. Many of the critical documents in Abu Dhabi were put under the control of a court appointed receiver in Abu Dhabi. The receiver has not permitted us to remove documents from Abu Dhabi.

With respect to witnesses, as you know, certain key employees of BCCI are under arrest in Abu Dhabi. We have asked for access to certain of those persons. We have been advised that these persons are under control of. The public prosecutor in Abu Dhabi and that access must be obtained through that official.

NATURE AND EXTENT OF BCCI ASSETS AND LIABILITIES

The task of estimating the realizability of assets and quantification of liabilities, whilst difficult prior to the conclusion of any liquidation, is particularly problematic in the case of BCCI. Problems of estimating assets and liabilities are aggravated by the sheer size and geographical spread of BCCI over 69 countries. In addition, the countries in which BCCI operated are, as I stated earlier, subject to different legal systems, banking regimes, and financial regulations including foreign exchange restrictions; the interlinked trading activities of the BCCI Group caused many contingent liabilities to crystallize on liquidation; and, as I have mentioned, the diversity of liquidator appointments and nature of such appointments have given rise to problems of cooperation and coordination on a worldwide scale. Finally, the records maintained by the BCCI Group were in many cases inadequate or unreliable.

The Estimated Financial Position is set forth in Paragraph 14 and Appendix 4 of the Report dated March 16, 1992. After adjustments to assets and liabilities which are explained in detail in the Report (Appendix 4 at 4-9), the estimated realizable value of assets and liabilities on liquidation are:

Total Assets: (US \$m) 1,409 Total Liabilities: (US \$m) 9,935.

The Joint Provisional Liquidators' Report dated November 29, 1991 (which was previously furnished to the Subcommittee) at pages 4-58, describes the variety of assets and their location worldwide. In general, the assets consist of inter-bank accounts (third party banks, central banks, non-banking financial institutions, and certificates of deposit), marketable securities, branches, subsidiaries and affiliates, the loan book and the residual portfolio.

In reviewing our efforts over the last ten months to perform our job while obeying the law in a fragmented and sometimes confusing legal landscape, I would emphasize for the Committee's consideration that BCCI is a global policy problem requiring global policy solutions. In the absence of such solutions, we have been endeavoring, as officers of the court, to maximize the return to innocent depositors and creditors, to cooperate with the authorities worldwide, and to obey the law wherever we conduct our efforts.

I shall be pleased to answer any questions which the Subcommittee may wish to raise.

Senator KERRY. Thank you very much, Mr. Smouha. Listening to your last statement about this global political problem, I guess I am prompted to ask you, is this such a global mess with so many untieable ends that you can never really look to either a financial resolution that is going to be satisfactory or to really understanding what happened?

Mr. SMOUHA. We are determined to use every effort we have to push through that entanglement to see if possibly any solution can be found.

Senator KERRY. When was this offer made by the Government of Abu Dhabi?

Mr. SMOUHA. The offer was initialed on the, I think it was February 20, 1992.

Senator KERRY. And the standing of that offer now is what?

Mr. SMOUHA. The offer is currently being submitted to the courts in Luxembourg, Cayman, and England for consideration by those courts and in due course, there will be full hearings of those courts to assess and to hear comments from all the creditors on that and any discussion that there may be on those agreements. And following that, it would then need to go to the creditors for an acceptance of that.

At the moment though, the negotiations are still in progress.

Senator KERRY. The offer is fundamentally \$1.8 billion?

Mr. SMOUHA. The offer itself is a large complex one.

Senator KERRY. But the financial part of it is \$1.8 billion?

Mr. SMOUHA. The central sum is \$1.7 billion, but is subject to adjustment upward and downwards for a whole number of different circumstances.

Senator KERRY. And the Abu Dhabi would secure the exclusive right, under this agreement, to seek redress from the accountants. Is that correct? The liquidator would give up that right.

Mr. SMOUHA. No, that is not correct, Mr. Chairman. And you're drawing attention to one particular clause. Where there are situations where both the entity, BCCI entities and the Government of Abu Dhabi might have or might seek legal redress against people, there were a number of clauses for the management of those legal actions. But under the agreement, both would participate in any recoveries from professional advisors.

Senator KERRY. Both BCCI and the Government of Abu Dhabi; Correct, the both you refer to is BCCI and the Government of Abu Dhabi?

Mr. SMOUHA. Yes. They would split the proceeds of any recoveries from those sources 50/50.

Senator KERRY. With the Government of Abu Dhabi.

Mr. SMOUHA. BCCI and the Government of Abu Dhabi yes.

Senator KERRY. The liquidator, for the sum of \$1.7 billion, would essentially turn over to the Government of Abu Dhabi the exclusive right to chase whoever may have perpetrated this fraud for indemnification, correct?

Mr. SMOUHA. The—

Senator KERRY. Or anybody liable for contributing to their problems by negligence, i.e. auditors and others.

Mr. SMOUHA. I think you're widening it a bit, Mr. Chairman, if I may suggest. If I deal with this specific matter, from a point of

management of the claim that would be turned over to Abu Dhabi to pursue the claim under the agreement.

Senator KERRY. Correct. That is what I am getting at.

Mr. SMOUHA. And the proceeds of that claim would be split 50/50.

Senator KERRY. Correct. You, as liquidator, would no longer have the current right you have to seek indemnification for any claim. You would cede that to the Government of Abu Dhabi and BCCI, jointly divisible, in exchange for your receipt of \$1.7 billion to distribute to creditors.

Mr. SMOUHA. The \$1.7 billion does not enter into this aspect of the agreement at all.

Senator KERRY. Well, I take it you would not enter into the agreement and give up your right to chase anybody for the consequences of their actions and win whatever judgments you might if you were not able to satisfy your creditors otherwise, correct?

Mr. SMOUHA. If I can deal with this specific issue. There are substantial amounts of documentation in Abu Dhabi. The Government of Abu Dhabi, or the majority shareholders, themselves have rights to make claims against professional advisors. BCCI itself, in its corporate form, also has rights and also has some documentation.

And if we achieve an agreement with the Government of Abu Dhabi, it would not be practical and it would not be productive for those two parties to pursue claims in parallel and perhaps competitively against professional advisors. And from a management point of view, it was felt appropriate that one party should be managing those claims, although both parties would retain responsibility to see that those are being pursued properly.

Senator KERRY. Let me just ask you for a simple yes or no, on this question. You currently, as liquidator, have a right to pursue a claim against those parties, do you not?

Mr. SMOUHA. Yes.

Senator KERRY. As we sit here.

Mr. SMOUHA. Yes.

Senator KERRY. Under this agreement, you would give up that right, you would cede it to the Government of Abu Dhabi and BCCI. Is that correct?

Mr. SMOUHA. We would cede the management of that claim, yes.

Senator KERRY. Management of that claim means the right to decide who to go after.

Mr. SMOUHA. Yes.

Senator KERRY. Correct.

Mr. SMOUHA. Yes.

Senator KERRY. There would be no suit if they do not decide to it. [Pause.]

Did you want to correct that?

Mr. SMOUHA. I think if you go onto your next question.

Senator KERRY. Well let me ask that question. I do not want to ask the next question if I am incorrect on that question. Would you retain a right to sue on behalf of the creditors after you have ceded this management right to the Government of Abu Dhabi?

Mr. SMOUHA. Mr. Chairman, the rights of the individual entities remain with those entities. So BCCI will retain its rights to pursue all professionals and others who have caused it damage in what-

ever way. The Government of Abu Dhabi also have a number of rights, or the major shareholders have a number of rights, also against professional advisors, and some of those will be in common with the ones which have caused damage to BCCI.

The proceeds of those claims will—of both lots of claims would be shared under this agreement 50/50, as we discussed. The management, which is separate under the agreement, would be in one single pair of hands, although the court-appointed fiduciaries would retain responsibility from their court appointments to continue to oversee the management of those claims.

I don't know if that's clear now, Mr. Chairman.

Senator KERRY. Well it is getting clearer, but I am still not sure of the actual legal rights that will be maintained. Currently you, as you sit here, are BCCI. You are BCCI today.

Mr. SMOUHA. Yes, Mr. Chairman.

Senator KERRY. And you represent recourse for thousands of people who may have claims, correct?

Mr. SMOUHA. We do not substitute for the individual claims of individual creditors. We have the claims that belong to the corporate entities.

Senator KERRY. Correct.

Mr. SMOUHA. Which, at times, are different from those of the individual creditors.

Senator KERRY. Well, for instance, if BCCI was truly wronged by its accountants or others, BCCI qua corporate entity would have rights of action against those entities, correct?

Mr. SMOUHA. Mr. Chairman, may I ask—

Senator KERRY. And you stand in that place today.

Mr. SMOUHA. May I ask Mr. Crystal to answer the legal aspects of this question?

Senator KERRY. Absolutely, sure. Mr. Crystal, do you want to come up to the table. It will save you some exercise here. Why do you not sit down. Please sit down. I apologize, just identify yourself, if you would, for the record.

Mr. CRYSTAL. Michael Crystal, Queen's Counsel from London.

Senator KERRY. Thank you. Before you say anything, has Mr. Smouha described accurately the relationship that would exist under this new agreement?

Mr. CRYSTAL. As you know, the documentation is voluminous and to accurately precis its terms in the course of an answer or two would be trying, even for a lawyer. He has had a fairly good shot at it; I think I would have put it slightly differently.

But I think, Senator, you can concentrate on the essence of your concern with me. And to the extent to which I qualify anything that Mr. Smouha says, I don't, of course, in any way do so by way of criticism of Mr. Smouha.

Senator KERRY. Well let me just ask some very simple questions.

Mr. CRYSTAL. Please do.

Senator KERRY. As a lawyer, I am well aware of how we can screw up the world with long, voluminous recitations that seem not to mean anything. But ultimately somebody is going to make them mean something.

And I would like to know what the intent is here. Do you intend for this arrangement to essentially be a transfer of your power to initiate legal action to collect for creditors?

Mr. CRYSTAL. The answer to that question, put that bluntly, is no. The arrangements, which are subject to approval by courts and creditors, deal with certain types of claims in different ways. You focused on the question of the auditors, and without in any way wanting to comment on claims which are now sub judice and therefore just trying to answer your question by reference to structure, the position at the moment is this:

There may be three types of claim available against the auditors of BCCI. BCCI itself may have a claim, the majority shareholders may have a claim, and under some systems of law individual creditors may have a claim. The arrangements made initially between BCCI, by its liquidators, and the majority shareholders, do not touch and concern any claims that individual creditors may have against the auditors.

So we can then focus on the claims that BCCI have and the claims that the majority shareholders have in relation to the auditors. The essence of—

Senator KERRY. What about claims individual creditors may have against either BCCI or the majority shareholders?

Mr. CRYSTAL. Yes. Can I, Senator, deal with the auditors and then come and deal with that. Under these arrangements, no creditor is asked to give up any claim he or she may have against BCCI at all. If any creditor of BCCI wants to take advantage of the \$1.7 billion that the majority shareholders are going to make available, that creditor has to decide whether he is or is not prepared to give up any claims he may have against the majority shareholders.

Senator KERRY. OK, well that is what I am getting at. You see what you will have here is a large pot of money, correct?

Mr. CRYSTAL. Yes.

Senator KERRY. Which will be available for you to settle claims. And the claimants will fundamentally have a choice. Currently they might look to getting 10 cents on the dollar. Is that correct?

Mr. CRYSTAL. Or less.

Senator KERRY. Or less. 10 cents on the dollar or less. If there is \$1.7 billion sitting there, is that—under that \$1.7 billion, that is where they would get their 10 cents or less. Is that true?

Mr. CRYSTAL. No.

Senator KERRY. That is what I thought, they might have a chance of getting more. So the choice then put to creditors is, OK, we have \$1.7 billion. I am going to give up all my rights of action against BCCI shareholders—

Mr. CRYSTAL. No, not BCCI. No, it's only such rights, if any, as they may have against the majority shareholders.

Senator KERRY. Agreed, against the majority shareholders. But anything as to BCCI is going to be settled with you, if they want part of the \$1.7 billion, correct. They are going to have to sign something that says we hereby settle all claims against BCCI.

Mr. CRYSTAL. No, no. The only thing they have to do, and the only thing they have to decide whether they want to do if they want to participate in the \$1.7 billion dollar fund, is to determine

yes or no whether they want to give up any claims—and I emphasize—if any, that they may have against the majority shareholders.

Senator KERRY. Only the majority shareholders.

Mr. CRYSTAL. Only the majority shareholders. Could I just go back and deal with your question about the auditors, because there are these two separate concepts. So as far as the auditors are concerned, there are claims that BCCI has, we're predicating, against the auditors, and claims that the majority shareholders have against the auditors. Because, as you will have appreciated from the statement which has been put in on behalf of the Government of Abu Dhabi, they make complaint against the auditors for advice that they were given as a result of which they made investments in BCCI.

Now, there are therefore these two pools of claims. Under the proposed arrangements—if sanctioned by the court and approved by a substantial majority of creditors so there's a concept of inherent creditor democracy inbuilt into all this—these claims will be managed—to the substantial extent, because there are one or two exceptions to every generalization—by the Government of Abu Dhabi's lawyers under a cooperation arrangement under which we have a say in the case management.

But the important point is that the proceeds of those claims, whether they were originally a BCCI claim or a majority shareholders claim, will be split 50/50 between the liquidators for the creditors and the Government of Abu Dhabi. Does that make it slightly clearer?

Senator KERRY. It does it make it slightly clearer. What happens if subsequent investigation were to show—and I am not suggesting that it does show this today, but what happens if it shows that BCCI, as the sort of rogue entity, and the Government of Abu Dhabi are linked?

What happens to the rights of people who then are waiving as to against the majority shareholders when, in fact, the majority shareholders are then more at risk with a larger capacity to have claims against them than they might otherwise? They would have effectively have bought themselves out of this for \$1.7 billion with a waiver.

Mr. CRYSTAL. If—and I do emphasize if with as many underlinings as one could put into a transcript of answers given—if there were any linkage of the type that you suggest which came out subsequently, the position would be as you say. Because under the terms of these arrangements the liquidators are required to give up the corporate claims, if any, that the companies may have or the liquidators may have against the Government of Abu Dhabi.

Individual creditors who want to participate are likewise being required to give up their claims, if any. And what they are getting in return—

Senator KERRY. Is immediate payment.

Mr. CRYSTAL. As an immediate payment—immediate in the sense of over the next couple years of up to 30 or 40 percent. But that's now getting back to a commercial issue which you may prefer to take up with Mr. Smouha rather than me.

Senator KERRY. And that is sort of a policy issue. I mean the question here is whether it is fair to the whole people. Here we

have an investigation that is now a year down the road in terms of when everything was supposed to be cooperated with. But in point of fact, everything has not been cooperated with.

We are a year down the road, we have people under house arrest. To our knowledge they are simply under house arrest. We do not know what prosecution or investigation is really producing what. None of our people have really interviewed them at great length or talked to them. A great many documents are still outstanding.

But here we are with a \$1.7 billion offer on the table which effectively transfers to the government the capacity to settle out everything. People give up their claims, and they get to make the choice about whether or not they, in fact, go after the very people who may be part of covering up what the true story is here. So you effectively buy your way out of any real way of getting to the bottom of this. I mean that is what could potentially be wrapped up in this offer.

Potentially. I am sitting here as a suspicious, somewhat, at this point, cautious individual who has watched this thing progress and unfold. And I certainly see the potential for this thing just to kind of go away.

Mr. SMOUHA. Yes, Mr. Chairman. That is part of the difficult decision that has to be made. If one waits for the total elapse of time until you know with any certainty all the answers, during that time the creditors would be waiting themselves as well. What the agreement is, or the proposed agreement is designed to do, is give the creditors the opportunity to see some of their money much earlier and with a higher degree of likelihood of recovery of a defined amount.

Senator KERRY. That is an honest statement of the dilemma, and I appreciate your candor about it. My great concern is why we are put in the position of having to face that dilemma, why we don't have a more honest assessment for these people about who's liable today. I mean, these folks deserve to know that if there are deep pockets here that have somehow fleeced them they ought to have the right to do that and not be shunted aside by virtue of delaying tactics.

Mr. SMOUHA. Well, Mr. Chairman, what we sought to do was to negotiate a commercial solution. In the negotiation of that commercial solution there were no delaying tactics exhibited whatsoever, and—

Senator KERRY. Have you received all the documents that you have sought?

Mr. SMOUHA. We have not, for initially we had no access to lots of documents. As we progressed, we have had increasing access to documents. Currently, during the state of negotiations the access to documents is temporarily restricted until we know where we stand. The Government of Abu Dhabi is not necessarily making all of the documents that we might be needing available to us.

Senator KERRY. Well, the Government of Abu Dhabi gave BCCI a note for \$4 billion in 1990, did it not?

Mr. SMOUHA. The answer is no.

Senator KERRY. There was no note for \$4 billion. Was that offered?

Mr. SMOUHA. There were certain notes given, but if I could ask you, if I could—need not answer that question in detail on that. The negotiations with the Government of Abu Dhabi are not completed. They are not signed, and if we discuss some of the details of the relationship it could be prejudicial to the interests of the creditors and I would not wish, Mr. Chairman, to do that in an open hearing of this type.

Senator KERRY. Well, I will honor that. I mean, obviously we don't want to do anything to be prejudicial to the creditors. On the other hand, I think it is important for the world to understand, because the world is involved here.

There are 69 different nations that have been touched by this, and literally thousands of citizens of many of those nations have been wiped out, absolutely wiped out. You had many of them in Great Britain in small business, people who have lost their life endeavor, and so I think getting to the bottom of this is obviously important in that regard.

I certainly want to see to it that none of the \$140 million of the Independence Bank is piled on top of the other billions that we have in the savings and loan problem, and I think each country will have that interest. So you are sitting in sort of the world's hot seat here, at this moment. I don't envy you at all.

But it seems to me that we have got to try to understand precisely who is responsible for what before you can strike some deal that wipes this all away, and it's particularly hard for me to understand how the entity that is holding all of the cards in terms of our ability to know these answers can on the one hand not allow those answers to be forthcoming and all of the evidence to be made available, but at the same time drive a bargain that exonerates it from us ultimately getting those answers. That is what I call an unfair trade practice, or a bargaining position, and it also runs contrary, I might add, to the plea agreement which you are representing.

Mr. SMOUHA. Mr. Chairman, there are a number of issues, a large number of important issues which you raise there. On the commercial aspects the hearings and the decisions of the courts will give creditors and their representatives in the countries a full opportunity for discussing their proposals, and the courts will not allow us as their fiduciaries to sign those agreements unless they feel that that is a correct thing to do.

So the agreements in a way are sub judice at the moment. They've been filed with the court, and we expect a full inquiry into those by the courts from both sides, and they will assess the commercial aspect of the situation. Our duties are commercial, and we are not meant and do not seek to make a number of moral judgments. The regulatory and other authorities in the different countries who are making investigations and with whom we are seeking to give all the assistance we can are the people who need to make those other judgments.

Mr. CRYSTAL. Could I add something, Senator Kerry?

Senator KERRY. Absolutely.

Mr. CRYSTAL. The commercial solution is not intended by the court appointed fiduciaries, nor does it, touch and concern the ongoing obligations of regulators to inquire into the past, to look into history, and to consider whether there has been criminal miscon-

duct which needs to be prosecuted. There's nothing in the plea agreement which we think cuts across those two separate interests.

The plea agreement requires us to cooperate with regulators to ensure that crime is prosecuted and we have taken assiduously our duties to provide full cooperation to the relevant regulatory authorities under the plea agreement. I am relieved to see you nodding your head in relation to that.

So far as the commercial arrangements are concerned, if they are approved by the courts and the creditors they will not prevent regulators in jurisdictions who have access to international treaties and in respect of whom there are appropriate international conventions from continuing to pursue criminals and bring them to justice in a variety of jurisdictions.

The arrangements with Abu Dhabi don't prevent that. They don't prohibit it. All they do is seek at the most essential level to provide a comfort level of return to creditors within the next few years which if the courts turn them down, or the creditors turn them down, will not be available, and these unfortunates will get nothing for many years.

Senator KERRY. I understand that, and this is precisely what this hearing is supposed to air, and I think it is good to get this out on the table. You get a sense of our concerns, and we get a sense of your approach, and it's important for everyone to have an understanding of where this is going.

So I think this is a fruitful inquiry and I appreciate what you just said about the further hearing process and capacity for input, and I think that is going to be most important, and people ultimately will make their own judgments, as people are free to do. I just want to make certain that they are not in a position where they don't get a chance to make those kinds of judgments.

Mr. CRYSTAL. The procedures require all known creditors, save for those who have asked to receive no notification from BCCI because they are in jurisdictions where they might be endangered by receiving materials, to be notified of these court hearings and of their ability to turn up and make representations, and as you can expect, a number are already represented and correspondence has come in both to the courts and to the courts' officers who draw it to the attention of the courts.

Senator KERRY. Let me just ask you some general questions in a number of areas, if I may. Following up on this, have you received a request for documents from the Federal Reserve, the Justice Department, and the Manhattan District Attorney, and if you have, are you responding to those requests at this time?

Mr. SMOUHA. Yes. There are one or two—in fact, there are two groups of documents which at the moment are being processed. There have been substantial documents—a substantial number of documents turned over already, but in particular there are two groups of documents which are in the process of being turned over. We do not have freedom to use our own discretion in what documents are passed and to whom because of banker-client relationships and the laws of different countries.

Senator KERRY. Because of what, I'm sorry?

Mr. SMOUHA. Banker-client relationships and the laws of different countries, but we have found that, given the will on both sides,

which is there, that we can pass over documents that have come into our hands with the support of the courts, so there are procedures which we are using in conjunction with your committee in one case and in conjunction with the Federal Reserve Board in another to pass those documents over with approval of the appropriate courts.

Senator KERRY. Are there some documents that will not be able to be transferred? Some of the documents that have been requested, will they not be able to be provided?

Mr. CRYSTAL. Can I try and answer that question in relation to England, only because one of the other complications we have is that you sometimes have to look at these issues by reference to a number of systems of law and I'm not qualified to express views, for example, under the law of Luxembourg.

Take England. There's no reason to think that any document that is sought through the intergovernmental route, which I appreciate is not one that you can go down, will, subject to the discretion of the court, not be made available to American authorities.

Senator KERRY. Are there documents in the control of you, as liquidator, that you cannot provide, notwithstanding they may be in your control in another country?

Mr. SMOUHA. That is a theoretical question.

Senator KERRY. No, it is a real question. What about the Cayman Islands documents?

Mr. CRYSTAL. All those the American regulators are having access to, as you will see from Mr. Smouha's statement.

Senator KERRY. What about Luxembourg?

Mr. CRYSTAL. As far as we know sitting here at the moment there are no outstanding requests for documents from governmental regulators from this jurisdiction which have come up against barriers in Luxembourg. There may be exceptions, Senator Kerry, but none immediately spring to mind.

The position of this committee is slightly different, although you recollect that the then-Vice Chancellor, Lord Browne-Wilkinson, made it perfectly clear at the end of July of 1991 that we should try and provide documents to you so far as we can, and as Mr. Winer knows, there is to be an application next week which, if it is successful, would lead to further documentary production to your subcommittee.

Senator KERRY. What about witnesses? Are there requests for witnesses that you cannot respond to?

Mr. CRYSTAL. I don't believe there are any extant requests for witnesses.

Senator KERRY. Have you received any ruling from the British court denying you the capacity to respond to any requests?

Mr. CRYSTAL. We have had no ruling since the liquidators have been appointed. Prior to their appointment, three customers of BCCI obtained injunctions which are still in place which have had an inhibiting effect.

Senator KERRY. Have you had free access to the Naqvi files? Mr. Smouha, have you had free access to the Naqvi files?

Mr. SMOUHA. We have had access to the file, the Naqvi files. At the moment, we do not have complete free access to those files.

Senator KERRY. Those are in Abu Dhabi, are they not?

Mr. SMOUHA. Yes, Mr. Chairman.

Senator KERRY. Would you like to have full access to the Naqvi files?

Mr. SMOUHA. Yes, Mr. Chairman.

Senator KERRY. Have you asked for that?

Mr. SMOUHA. We had access to that and just during this period of final period of negotiation of the agreements that has been temporarily suspended.

Senator KERRY. Should the Naqvi files be, as a legal matter, within the possession of the liquidator in your view?

Mr. SMOUHA. Mr. Chairman, we, as I explained earlier, need to comply with the laws in each country. Those files are currently in the control of the receiver appointed in Abu Dhabi under Abu Dhabi law, and the access that he has given us has enabled us to work with those files, but that is in the discretion of the receiver in Abu Dhabi.

Senator KERRY. Well, you use the term, under Abu Dhabi law. Having visited Abu Dhabi once and sort of inquired about it, it seems pretty clear to me that Abu Dhabi law is basically by decree of the Sheik.

Mr. CRYSTAL. I'm not sure that either of us are really qualified to answer that. My own experience of Abu Dhabi law is that there is in fact a very sophisticated infrastructure with legal rules and regulations.

Senator KERRY. And if the Sheik ordered these files to be made available, you don't believe they would be made available, or could be? You're hesitating. You noted my nodding head. I'm noting your smile.

Mr. CRYSTAL. It's a rhetorical question, Senator.

Senator KERRY. Well, that's an observation.

I want to try to keep moving here. Tell me, if you will, in good old lay person's terms that everybody can understand, the nature and the extent of the fraud that you have uncovered in BCCI.

Mr. SMOUHA. There are a number of areas, as you would expect, we have not fully uncovered all the areas of fraud. The greatest part in just sheer size of numbers that were fraudulent was the nondisclosure of quite how serious the situation is within BCCI. If you like, I could give you a number of categories of areas where the fraud was hidden.

There were deposits which were made with the group which were not recorded, and those deposits were used to cover up losses which had been incurred. There were in some instances loans written into the books which may or may not turn out to have been fictitious, and we are still discovering more things in that respect.

There is evidence of some loans having been made where, at the time the loan was made, we found no documentation that you would expect to see in the bank. There was no security in the way that you would expect to see for loans of that size, and consequently we are questioning whether they were genuine loans because the commercial recoverability of those was so much in doubt at the time they were made.

There were instances where affiliates were used to create assets or to conceal liabilities or to conceal that assets had lost value. There was what was called loan parking, and this is the movement

of assets of doubtful value to areas of less stringent review. In those cases, the assets would be carried at an inflated value to the real value, but because the review was weaker, or thought to be weaker, then that might not be discovered.

All these items were used as a way to cover up a severe shortfall in the value of the assets of the bank. There were very substantial nonperforming loans, and I am now talking in the range of billions of dollars, which if you take cognizance of those loans and the real value of those loans if they were written into the books, we would have ended up with a bank which had a massive shortfall on its capital, and therefore the bank had a substantial negative value.

So a lot of the frauds were done as this negative value accumulated because as you know well, capitalized banks these days have difficulty in showing any profits, and therefore if they have a deficit on capital they had very substantial losses that they would incur, and so there was a snowballing effect of the coverup of the losses.

So those were some of the areas where we have found there to be fraud.

Senator KERRY. Some people, Mr. Smouha, have wondered why you as liquidator have waited to collect a lot of the money that some people owe BCCI through these kinds of loans and other schemes.

For instance, there are some questions as to why Gaith Pharaon has not been sued for collection or why the Gokal brothers have not been. Is there a strategy there or can you say to us that they will be or you are about to, or what do we look for there for recovery?

Mr. SMOUHA. Mr. Chairman, if I can take this away from individual cases, wherever and whenever we are ready to bring legal actions for the recovery of funds, where that would be to the benefit of the estates we will do so and they will be pursued extremely hard.

The records of this group were not in very good shape and there needs to be quite substantial research into a number of these cases before we will be ready to bring legal action. When we bring legal action—

Senator KERRY. You do anticipate bringing it?

Mr. SMOUHA. That is our job.

Senator KERRY. Do you have a sense that you have adequate person-power and resources to be able to do what you have to do here?

Mr. SMOUHA. None of the cases which will be brought are easy ones, and that is why we need to do, to have very careful preparation. The other problem that we live with is that the bringing of some of these cases does demand quite substantial financial resources. As to the other resources, we believe there are quite adequate resources of people and skills to bring those cases.

Senator KERRY. What baffles me a little bit is that here is this rich nation, Abu Dhabi that is so victimized, I would think that they would want to cooperate with you greatly and perhaps encourage you to help bring these actions and perhaps even provide some resources to assist you to be able to recover. It is in their interest to recover, isn't it?

Mr. SMOUHA. Yes, it is and we anticipate that if we have an agreement with them, they will give us every assistance to pursue assets. We also anticipate that one of the benefits that can come out of the plea agreement that we have here in the United States, will enable your regulators and your authorities to give us support and assistance and information that will help us pursue those assets.

Senator KERRY. We are going to have to try move on here simply because we are running out of time. I do have some related questions and you have traveled some distance to share your expertise with us. Just a few other questions before we, by necessity, must move on. I know you are not going to be sad to but we hate to lose your presence.

Have you found any documents regarding BCCI's involvement in bribery or arms trafficking?

Mr. CRYSTAL. I am sorry, I am not sure we can answer that question.

Senator KERRY. At this point or this afternoon, could you do it?

Mr. CRYSTAL. You have asked for certain categories of documentation, if there are any documents that fall into any of the categories that you have asked for which touch and concern—if the vice chancellor makes an appropriate direction, your subcommittee will get them.

Senator KERRY. I appreciate that. Did BCCI control the Banque de Commerce et Placements?

Mr. SMOUHA. BCCI, that I know of, had a 15 percent holding in that bank. There were two other substantial holdings, each at 35 percent from related entities. I have not and we have not investigated fully the controlling power of those entities at this stage.

Senator KERRY. Did BCCI control the Kuwaiti Investment Financial Company, KIFCO?

Mr. SMOUHA. There were substantial holdings in that company, the degree of control that it had, that BCCI had or the degree of control that BCCI exercised is not information which I have with me now.

If, Mr. Chairman, that is something of importance to this committee, we can look into that and find means to make that information available.

Senator KERRY. Well, I would think it would be of critical importance to any kind of settlement that you could arrive at with BCCI, because if BCCI controls all these other entities, and these entities have assets or individuals with assets, that certainly bears heavily on the question of creditor recovery.

Is there a tracing at this point of BCCI's ownership network?

Mr. CRYSTAL. Senator, you have to be a little bit careful with this because as you have seen from the documents that we have supplied to the subcommittee, there are claims asserted by the government of Abu Dhabi the other way around running into some billions of dollars.

So although you referred earlier this afternoon to a \$1.7 billion fund, that is only a part of this fairly complicated jigsaw and because of the existence of these cross-claims which are themselves compromised through the arrangements, if approved by the courts, looked at from our perspective of harboring the assets of the es-

tates, to explore with you this afternoon the precise nature of the relationship between BCCI and KIFCO would be in a sense to go over territory that the courts may go into.

But as Mr. Smouha said, if there is something that we can do to give you an answer on paper, we would be happy to do so.

Mr. SMOUHA. If I could take that more generally, Mr. Chairman, the agreement with Abu Dhabi is not intended and is not designed to stop BCCI pursuing any assets which it rightfully owns, and the ownership of KIFCO—

Senator KERRY. Well, I am not so much thinking of BCCI pursuing the assets as I am others being able to pursue the assets of BCCI or BCCI itself. I mean, if BCCI has five assets out there that you determine it legally owns, then creditors of BCCI have a very different picture to look at than if they only think they are looking at BCCI without the assets, and it seems to me, you are in a position to determine what the full measure of BCCI is which greatly affects any kind of creditor recovery.

If BCCI is indeed much more than meets the eye, as most of us suspect, this money went somewhere, much of it, some of it has been wiped away in nonsensical loans and in phony loans, but there are a lot of people wondering how much of it may be in Switzerland or how much of it may be in the Cayman Islands or in Luxembourg or in other assets that have been squirreled away.

Mr. SMOUHA. As long as it is economically advantageous to do so, we are determined to pursue all the funds that belong to BCCI and to pursue those to get the maximum amount of recovery we can for the creditors.

Senator KERRY. That is the only reason I asked the question on KIFCO because I wanted to know if you have, as of this moment, or were willing to state publicly that you have determined that relationship. You have said you are not willing to state it publicly. I accept that. Perhaps we can share some information some other way.

But at this least this shares with you the breadth of inquiry with which this committee at least is reviewing this problem.

Mr. SMOUHA. Mr. Chairman, if I can just put in there, to illustrate the situation, we have well—under any normal insolvency situation there are very substantial uncertainties. In this one we have huge uncertainties related to the liabilities of BCCI and even greater uncertainties which you have correctly drawn attention to regarding the assets.

We intend to continue to pursue those assets wherever they are—as long as I said subject only to the fact being the economic one. The difficulty is to translate for ourselves—and it is even more impossible to do so and more dangerous to do so for the creditors—what that might mean.

I think in a number of years time the situation, I hope, will be much clearer and we will know what we have recovered. It would be quite wrong to give the creditors excess expectations of recoveries. There are substantial opportunities to be investigated, to see what can be recovered.

Senator KERRY. I appreciate that.

Mr. SMOUHA. The figures that are given to them does not mean that if we reached any levels such as those that we would stop doing any work.

Senator KERRY. Fair enough. I think that is a good note on which to end this particular panel. We are about to hear from the representative of the government of Abu Dhabi and again, I very much appreciate your sharing these thoughts with us today.

You have an unenviable job and a very difficult one and obviously, we wish you well as you do try to sort through this.

Mr. SMOUHA. Thank you very much, Mr. Chairman.

Senator KERRY. Thank you very much. At this time, I will insert into the record documents pertaining to the liquidation of BCCI.

[The information referred to follows:]



**BANK OF CREDIT AND COMMERCE
INTERNATIONAL SA**

JOINT PROVISIONAL LIQUIDATORS' REPORT

29 NOVEMBER 1991

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Ross**



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29 November 1991

**High Court of Justice
Companies Court
Chancery Division
The Strand
London WC2A 2LL**

A. INTRODUCTION

1 Purpose of Report

- 1.1 This Report is prepared by the Joint Provisional Liquidators of Bank of Credit and Commerce International SA ("BCCI") in relation to the adjourned hearing of the winding up petition which is listed for hearing on Monday 2 December 1991.**

Member
DRT International

Agencies: Belfast, Birmingham, Bolton, Bournemouth, Blackwell, Bristol, Cambridge, Cardiff, Coleraine, Crawley, Darford, Edinburgh, Glasgow, Leeds, Leicester, Liverpool, London, Manchester, Milton Keynes, Newcastle upon Tyne, Newport, Nottingham, Southampton and Swansea.
IMPORTANT NOTICE: Partners acting as administrative receivers contract without personal liability.
Principal place of business at which a list of partners' names is available: Hill House, 1 Little New Street, London EC4A 3TR.
Authorised by the Institute of Chartered Accountants in England and Wales to carry on investment business.

1.2 This Report contains a summary of the following:

- 1.2.1 Certain relevant events which have occurred since 5 July 1991 (Paragraphs 4 to 22): the Provisional Liquidators refer to their Reports to the Court dated 19 July 1991 and 23 August 1991 for a summary of certain of the principal relevant events occurring before 23 August 1991;**
- 1.2.2 The financial position and state of affairs of the BCCI Group and, in particular, BCCI and Bank of Credit and Commerce International (Overseas) Limited ("Overseas") (Paragraphs 23 and 24);**
- 1.2.3 The short term future steps which are proposed to be taken (Paragraphs 25 to 28).**

2 Sources of information

2.1 The information contained in this Report is derived from the following principal sources:

- 2.1.1 Documentation and records maintained by BCCI and Overseas in the United Kingdom, Luxembourg, the Cayman Islands and Abu Dhabi;**
- 2.1.2 Employees and former employees of BCCI and Overseas;**



2.1.3 Personnel from Touche Ross & Co and its associated member firms within DRT International ("Touche Ross & Co."), and Lovell White Durrant, who have been involved in the provisional liquidation of BCCI and Overseas and similar proceedings in other jurisdictions in respect of BCCI and Overseas and their associated entities.

2.2 Except to the extent stated in this Report, none of the information obtained from third parties or from the records of BCCI and Overseas and their related entities has been independently verified, nor has the financial information set out in this Report been audited by Touche Ross & Co.

2.3 The contents of this Report have been read and, so far as material, approved by Mr Smouha, the Commissaire of BCCI appointed by the District Court of Luxembourg ("the Luxembourg Court") and the Provisional Liquidators of Overseas appointed by the Grand Court of the Cayman Islands ("the Cayman Court"). In this Report references to "the Touche Ross Officeholders" are to the Provisional Liquidators, Mr Smouha as Commissaire of BCCI and the Provisional Liquidators appointed by the Cayman Court collectively.

3 Group structure

3.1 The corporate structure of the BCCI Group as at 30 June 1991 is set out in the organisation chart at Appendix 1.

B. RELEVANT EVENTS SINCE 5 JULY 1991

4 Current status of the BCCI Group outside England

- 4.1 The current worldwide position in jurisdictions in which the companies and entities forming part of the BCCI Group operated is, so far as the Provisional Liquidators have been able to determine, as set out in Appendix 2.
- 4.2 In the following paragraphs, the Provisional Liquidators summarise the present position in relation to BCCI and Overseas in Luxembourg, the Cayman Islands, Abu Dhabi, Scotland and the Isle of Man.

Luxembourg

- 4.3 The position in relation to the proceedings concerning BCCI and BCCI Holdings (Luxembourg) SA ("BCCI Holdings") before the Luxembourg Court is set out in Paragraphs 29 to 32 of the Provisional Liquidators' Report to the Court dated 19 July 1991 and Paragraph 4 of their Report to the Court dated 23 August 1991.
- 4.4 Mr Smouha, as Commissaire of BCCI, will deliver a Report to the Luxembourg Court by 4 January 1992 recommending either the restructuring of BCCI or its liquidation. The Commissaires of BCCI Holdings are required to deliver such a Report to the Luxembourg Court in relation to BCCI Holdings by 9 January 1992.



- 4.5 In the light of the matters referred to in this Report, it is highly improbable that there can be a restructuring of BCCI. If, as seems probable, BCCI will be placed in liquidation in Luxembourg, the law and procedure applicable to the liquidation of BCCI in Luxembourg will largely be governed by a detailed plan of liquidation to be decided upon by the Luxembourg Court ("the Luxembourg Plan"). The Luxembourg Plan will include provisions designed to meet the particular requirements of BCCI's liquidation.**

The Cayman Islands

- 4.6 The position in relation to Overseas in the Cayman Islands is as follows:**
- 4.6.1 On 5 July 1991, in response to the events in England earlier that day, His Excellency the Governor of the Cayman Islands formed the view that Overseas appeared likely to become unable to meet its obligations as they fell due and was carrying on business in a manner detrimental to the public interest, the interests of its depositors and of its other creditors.**
- 4.6.2 By Orders dated 5 July 1991 His Excellency the Governor of the Cayman Islands appointed Ian Wight as Receiver of Overseas, Credit and Finance Corporation Ltd. ("CFC") and International Credit and Investment Company (Overseas) Ltd. ("ICIC Overseas") under the provisions of S. 14 of the Banks and Trust Companies Law 1989. The appointment directed**

Ian Wight to assume control of the affairs, property and assets of Overseas, CFC and ICIC Overseas with all the powers of a Receiver appointed under S. 18 of the Bankruptcy Law (Revised).

- 4.6.3 On the same day, injunctions were granted, on the application of the Attorney General, over several companies closely connected with Overseas, CFC and ICIC Overseas. The injunctions restrained those companies from transferring or disposing of funds or assets belonging to them or any person beneficially interested in any of them.**
- 4.6.4 Ian Wight delivered a Report to His Excellency the Governor of the Cayman Islands on 22 July 1991. The Report recommended the appointment of Joint Provisional Liquidators to assume control over Overseas' affairs.**
- 4.6.5 On the same day, His Excellency the Governor of the Cayman Islands, acting with the advice of the Executive Council, revoked the banking and trust licences held by Overseas, CFC and ICIC Overseas.**
- 4.6.6 Immediately following the revocation of the licences, petitions were presented on 22 July 1991 to wind up Overseas, CFC and ICIC Overseas. On the same day Ian Wight and Robert Axford (both of Deloitte Ross Tohmatsu) were appointed as Joint Provisional Liquidators of Overseas, CFC and ICIC Overseas by the Cayman Court pending the hearing of the**

petitions on 3 September 1991.

- 4.6.7 On 3 September 1991 the petitions were adjourned to 16 December 1991 on the basis of the recommendations contained in the interim Reports of the Joint Provisional Liquidators of Overseas, CFC and ICIC Overseas which were delivered to the Cayman Court on 30 August 1991.

Abu Dhabi

- 4.7 The position in relation to BCCI in Abu Dhabi is as follows:

- 4.7.1 On 18 July 1991 the Court in Abu Dhabi appointed a Judicial Custodian over BCCI and all its branches in the UAE on the application of the Government of Abu Dhabi;
- 4.7.2 Mr Ali Saeed El Sharhan, the Judicial Custodian, was appointed

"to preserve all the property of the bank whether liquid, moveable or real and of whatever description such property may be, whether currency, commercial paid debentures, deposits or shares, and also to follow the property of the depositors and the means thereof overseas, and to exercise control over all of the documents underlying such investment, whether in real or moveable property."



- 4.7.3** The Provisional Liquidators understand that on 28 July 1991, the Government of Abu Dhabi discontinued its application for the continuation of the appointment of a Judicial Custodian. Local depositors however successfully applied for its continuation. Mr Kalban was subsequently appointed in place of Mr Sharhan as Judicial Custodian.

Scotland

- 4.8** The position in relation to BCCI in Scotland is as follows:
- 4.8.1** On 5 July 1991 the Bank of England petitioned the Court of Session in Scotland to wind up BCCI and for the appointment of provisional liquidators. On the same day Christopher Morris, Nicholas Lyle and John Richards were appointed Joint Provisional Liquidators. On 23 July 1991, by Interlocutor of the Court of Session, the appointments of Messrs Lyle and Richards as Provisional Liquidators were recalled and Mr R W Wilson, a partner in Touche Ross & Co. in Scotland, was appointed in their place as Joint Provisional Liquidator together with Christopher Morris;
- 4.8.2** The order dated 5 July 1991 in Scotland, referred to in paragraph 6 of the Report dated 19 July 1991, was made pursuant to S. 426 of the Insolvency Act 1986 ("the 1986 Act") which provides for assistance between, among others, the Court in Scotland and the High Court. The proceedings in



Scotland thus depend on the position in the High Court in London. There is no return date for the petition in Scotland and it is envisaged that, if appropriate, a corresponding order to any obtained in the High Court on 2 December 1991 will be sought and obtained in Scotland.

Isle of Man

4.9 The position in relation to BCCI in the Isle of Man is as follows:

4.9.1 On 6 July 1991 the High Court of the Isle of Man appointed Peter Vanderpump (of Touche Ross & Co) as Provisional Liquidator of BCCI on the petition of the Financial Supervision Commission.

4.9.2 The hearing of the petition has been adjourned by the High Court of the Isle of Man to 12 December 1991.

5 Information and records

5.1 The initial steps taken by the Provisional Liquidators to secure BCCI's information and records are dealt with in paragraphs 35 to 38 and 75 and 76 of the Report dated 19 July 1991.

5.2 This section of the Report deals with the information and records currently available to the Touche Ross Officeholders in respect of the



activities of BCCI and Overseas and the work undertaken by Touche Ross & Co. in obtaining, securing and processing this information.

United Kingdom

- 5.3 As set out in the Report dated 19 July 1991, the Provisional Liquidators took control of BCCI's premises, records and computer systems on 5 July 1991.**
- 5.4 As a result of the closure of BCCI before the completion of the day's processing on 5 July 1991, it was first necessary to capture and process the remaining transactions. This has involved a team of Touche Ross & Co. staff at each branch, whose principal tasks have been:**
- 5.4.1 Identifying and correcting imbalances in branch accounts;**
 - 5.4.2 Reconciling cash at branches disclosed in the records to that counted and transferring it to the Provisional Liquidators' account at the Bank of England;**
 - 5.4.3 Reconciling balances disclosed in the records as due from BCCI's clearing banker, resolving differences, and posting entries to eliminate these;**
 - 5.4.4 Reconciling balances between branches and head office and posting entries to agree these;**

- 5.4.5 Capturing and processing transactions executed prior to the appointment of the Provisional Liquidators but which were unprocessed at that time;**
 - 5.4.6 Reversing transactions which had been recorded prior to the Provisional Liquidation but which subsequently failed to complete; and**
 - 5.4.7 Establishing recoverable amounts and identifying potential liabilities.**
- 5.5 In addition the Provisional Liquidators have set up separate teams of staff at head office who have been concerned with the reconciliation of sterling and foreign currency balances due to and from banks both in London and around the world, resolving differences and posting resulting accounting entries.**
- 5.6 The information required to carry out the work outlined in paragraphs 5.4 and 5.5 above has been obtained by producing reports from BCCI's existing, very old, accounting system and from documents left on BCCI's premises. It has required a significant amount of work to locate, order and process the information.**
- 5.7 The result of this work has been the generation of a statement of affairs, or balance sheet, for each branch together with a detailed breakdown of every account balance.**



- 5.8 Other work which has taken place at the branches has included investigation of claims and, where appropriate, return to bona fide claimants of the contents of safety deposit boxes, valuables held by BCCI in safes for safe-keeping or securities held by BCCI as third party custodians.**
- 5.9 In addition, Touche Ross & Co. staff have answered a very large number of enquiries from customers or their representatives for account balances and other information relating to their accounts and have operated a multi-lingual helpline for employees and depositors.**
- 5.10 Given the need to maintain BCCI's accounting records for the purposes of any liquidation, the Provisional Liquidators also started development of a microcomputer-based system which can:**
- 5.10.1 Receive account balances from the main existing system;**
 - 5.10.2 Capture subsequent transactions, holding the correct value date;**
 - 5.10.3 Calculate interest based on the terms currently in place with the customer; and**
 - 5.10.4 Produce customer statements for activity after 5 July 1991.**

**Abu Dhabi**

- 5.11 The Touche Ross Officeholders have obtained access to the books and records located in Abu Dhabi, although these are not in their custody or control. Members of Touche Ross & Co. have been working in the accounts department receiving the assistance of BCCI accounts team staff in obtaining information required in carrying out their tasks.
- 5.12 The books and records relating to BCCI and Overseas include branch returns, journals and consolidation printouts. Using this information, balance sheets for BCCI and Overseas have been produced.
- 5.13 A summary of the accounting records has been compiled in the form of a nominal ledger, supported by a properties and investment ledger. In addition, attempts have been made to reconcile inter-company and inter-branch balances.
- 5.14 The Touche Ross Officeholders have also had access to the loan information held in Abu Dhabi which includes files used for central credit control procedures. Use has been made of these files in assessing the loan portfolio of BCCI and Overseas, although the information contained in them is limited and in a number of cases out of date.

Luxembourg

- 5.15 The information and records of BCCI held in Luxembourg are under the control of Mr Smouha.
- 5.16 The information and records relate firstly to the local branch's operations. All current banking records are retained in the branch and are computerised. Supporting the ledgers are files concerning loans, trade finance and treasury transactions and employee matters. Old banking records are contained in a warehouse which has been secured.
- 5.17 In addition to the branch records, the Luxembourg office housed a regional office responsible for reporting to the Institut Monetaire Luxembourgeois. The regional office holds files of returns from the branches of BCCI for the purpose of consolidating its position, and these files have been secured.
- 5.18 The statutory records of BCCI Holdings have been located and secured. They consist of statutory books, including board minutes, the register of shareholders, minutes of meetings with shareholders and correspondence, together with the register of capital notes. BCCI Holdings' general ledger, investment ledger and supporting journal vouchers have also been secured.

**The Cayman Islands**

- 5.19 The books of account and supporting documentation of Overseas held in the Cayman Islands relate to transactions of the Grand Cayman branch of Overseas. No records are held in respect of the 62 other branches and offices of Overseas. As explained below, attempts have been made to obtain information from the countries in which such branches and offices operated.
- 5.20 Possession of the records at the Grand Cayman branch was obtained by the Receiver appointed there on 5 July 1991.
- 5.21 At that time, the books had been written up to 30 June 1991. The accounting records, consisting of a general ledger supported by a loans ledger and a deposit ledger, have since been brought up to 31 October 1991.
- 5.22 Supporting the books of account are loan and security files in respect of the majority of loans, and transaction records and vouchers.
- 5.23 At present all the files containing customer information, transaction records and vouchers are being catalogued, although the large number of these documents means that this process is likely to continue for some time.



6 Preservation and realisation of assets (BCCI/ Overseas)

- 6.1 The Provisional Liquidators have been advised that, as a matter of English Law, they are concerned with the preservation and realisation of BCCI's assets worldwide for the benefit of creditors worldwide and are not concerned exclusively with BCCI's affairs in England.
- 6.2 To the extent that it has been reasonably practicable and in conjunction with the Touche Ross & Co. and co-operating court appointed officers in other jurisdictions, the Provisional Liquidators have accordingly sought to preserve and realise assets of BCCI worldwide. The Touche Ross Officeholders have, in particular, acted in close co-ordination and conjunction with each other.
- 6.3 This section deals solely with those jurisdictions in which the affairs of BCCI or Overseas are under the control of a member firm of Touche Ross & Co. and with the activities of the members of Touche Ross & Co. who have been involved with the branches of BCCI and of Overseas.
- 6.4 The Touche Ross Officeholders have sought information from office holders in jurisdictions in which members of Touche Ross & Co. have not been appointed. Detailed responses to date have been very limited. In some cases, either central banks have prohibited the release of information or the locally appointed officer has been unwilling to co-operate on the basis that such co-operation may impair his ability to "ringfence" the assets under his control. "Ringfencing" is discussed in paragraphs 24.18 to 24.21 below.

7 Inter-Bank Accounts

7.1 This section deals with amounts due from correspondent banks, non-banking financial institutions ("NBFI") and Certificates of Deposit ("CD"). Only NBFIs and CDs classified by BCCI as due from banks are dealt with in this section.

7.2 Balances due to BCCI and Overseas from correspondent banks, NBFIs and CDs on 5 July 1991 amounted to approximately US\$ 2,244m. These related to operations in 41 countries and can be summarised as follows:

	US\$m	US\$m	US\$m
	BCCI	OVERSEAS	TOTAL
Third party banks	750	695	1,445
Central banks	204	133	337
Non-banking financial institutions	8	34	42
Certificates of deposit	239	181	420
	—	—	—
	1,201	1,043	2,244
	—	—	—

7.3 Balances due to subsidiaries and affiliates at 30 June 1991 and not included above amounted to US\$ 1,790m and related to operations in 27 countries.

- 7.4 The work of Touche Ross & Co. in Abu Dhabi was directed towards assessing and assisting in the recoverability of these cash balances and in determining the reasons for non-payment of balances as they became due.
- 7.5 This involved the identification of all bank accounts and deposits maintained in the 4 operating countries. The identification of these individual balances was highly complex as BCCI and Overseas did not have a fully integrated financial reporting system and the branch returns giving inter-bank details for the quarter ended 30 June 1991 were outstanding at the date of closure. With the appointment of local liquidators or administrators the normal flow of financial information ceased.
- 7.6 To obtain a complete analysis, requests for information as at both 30 June 1991 and 5 July 1991 were sent to the branches. Responses were poor with many sources being reluctant or unable to provide details. The compilation of a database incorporating this information has been a time consuming exercise due to the difficulty in obtaining accurate and up-to-date information.
- 7.7 The significant amounts due from banks collected to date have been:

	US\$m
UK	158
Luxembourg	20
France	90
Netherlands	9
Oman	10
	<hr/>
	287
	<hr/>

- 7.8** These amounts represent only a small proportion of the amounts due from banks and the balances remaining may be more difficult to collect for the following reasons:
- 7.8.1** Ringfencing by court appointed officers within their own jurisdictions and claims asserted by them outside their own jurisdiction have resulted in multiple claims and the banks withholding payment until the beneficial owner can be established. In many jurisdictions this will involve lengthy and costly court proceedings.
- 7.8.2** A majority of banks are seeking to set-off amounts due to and from them on a worldwide basis irrespective of the branch's position within the BCCI group. The cross-border logistical and legal difficulties in negotiating or settling with each bank will take a significant amount of time and expense.
- 7.8.3** All funds in American banks in the US have been frozen.
- 7.8.4** Set-off is being claimed by third parties against deposits made via the Islamic Banking Unit, referred to in paragraphs 12.24 and 12.25 below.
- 7.8.5** Amounts due from central banks may be subject to exchange control regulations and only available locally, if at all, in ringfenced jurisdictions.



8 Branches, Subsidiaries and Affiliates

Steps taken

- 8.1 The BCCI Group operated branches, subsidiaries and affiliates in 69 countries and had representative offices in a further 6 countries.**
- 8.2 Since 5 July 1991 a team of partners and managers of Touche Ross & Co. have made contact with local court appointed officers, central bank officials and branch and subsidiary management in all 69 countries and succeeded in visiting in excess of 50 countries.**
- 8.3 The Touche Ross Officeholders have endeavoured, for each country, to perform the following:**
 - 8.3.1 To produce a summary indicating the financial position of the entity based on the latest branch returns;**
 - 8.3.2 To liaise with the Touche Ross Banks and Loans team in order to provide more accurate information;**
 - 8.3.3 To clarify the status of each entity having regard to the stance taken by the relevant authorities within each country in relation to that entity;**
 - 8.3.4 To make contact with local court appointed officers, central bank officials and branch and subsidiary management in control of local operations and arrange meetings to discuss**

steps to be taken in the locality;

- 8.3.5 To appoint local independent lawyers, through Lovell White Durrant, to advise on the Touche Ross Officeholders' rights, powers and duties in individual foreign jurisdictions under local legislation and to assist in negotiations;
- 8.3.6 To gain recognition of the Touche Ross Officeholders appointment by the authorities in the various jurisdictions, to enable access to be obtained to the BCCI Group's assets and to assess the latest available financial position from the BCCI Group's records and discussions with its locally based officers;
- 8.3.7 To consider the most appropriate course of action to maximise the realisations for creditors worldwide whether by way of a sale, liquidation or scheme of arrangement or otherwise;
- 8.3.8 To pursue sales by preparing sales memoranda and identifying potential purchasers and complete the sale where considered appropriate.

Problems

- 8.4 The task facing the Touche Ross Officeholders in conducting negotiations in certain foreign countries for the beneficial realisation of assets has not been easy. The problems which they have encountered include the following:



- 8.4.1 The respective parties involved, such as locally appointed court officers, administrators or receivers and central bank authorities, have often had different objectives from those of the Touche Ross Officeholders;
- 8.4.2 Certain authorities have not recognised the appointment of the Touche Ross Officeholders and have not permitted negotiations to take place. Certain authorities have issued instructions to the local administrators preventing them from having any discussions with the Touche Ross Officeholders;
- 8.4.3 Certain authorities have required the Touche Ross Officeholders appointment to be separately ratified by their own court. This has inevitably delayed discussions;
- 8.4.4 In a number of jurisdictions local legislation has prevented the Touche Ross Officeholders from realising the maximum potential benefits for worldwide creditors. Such legislation has included ringfencing, preferring local depositors and exchange control. Certain countries have also sought to pass legislation advantageous to local creditors where this was not already in place at 5 July 1991;
- 8.4.5 Where a disposal of an entity to a third party was considered possible and appropriate, the Touche Ross Officeholders have, on occasions, been restricted from negotiating with interested parties, because the relevant authorities abroad imposed



onerous criteria which potential purchasers were unable to fulfil;

- 8.4.6 In a number of jurisdictions insolvency procedures have been initiated by third parties. On occasions the Touche Ross Officeholders have contested these procedures in the foreign court so as to allow sufficient time to pursue a potential sale.

Current position

- 8.5 By the end of November 1991 the Touche Ross Officeholders had successfully completed disposals of the BCCI Group's operations in five jurisdictions thereby realising a total of US\$ 18.3m and substantially reducing liabilities of the BCCI Group.
- 8.6 A sale agreement was reached by the authorities in Jordan on 31 October 1991 without the approval of the Touche Ross Officeholders. The Touche Ross Officeholders are considering the legal position with regard to this transaction.
- 8.7 The Touche Ross Officeholders are currently involved in negotiations which may ultimately result in disposals in 16 further jurisdictions and are developing a strategy which may result in the disposals of the operations in five other jurisdictions.

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9 Loan Book

- 9.1 The book figures of the combined BCCI and Overseas loan books at 5 July 1991 (before provisions) amounted to US\$ 8,968m arising from activities in 41 countries, viz:**

		US\$m
BCCI	Bahrain	1036.2
	UK	1773.9
	Luxembourg	408.0
	Other	<u>1257.2</u>
		4475.3
Overseas	Cayman	3322.8
	Other	1169.9
		<u>4492.7</u>
Total		<u>8968.0</u>

- 9.2 Loans by other subsidiaries and affiliates of the BCCI Group amounted to US\$ 2,825.9m (before provisions) and related to operations in 27 countries.**

Initial steps

- 9.3 On arriving in Abu Dhabi, members of Touche Ross & Co. sought to obtain detailed financial information in respect of the loan books and other items in the balance sheets of BCCI and Overseas. The initial position was established to be as follows:**
- 9.3.1 BCCI and Overseas had no fully integrated reporting system. Consequently, the combined loan and other financial information was prepared by re-input of data in Abu Dhabi by BCCI staff;**
- 9.3.2 BCCI and Overseas obtained detailed financial information from their branches quarterly. Summary financial information was obtained monthly. Prior to the closure of BCCI and Overseas on 5 July 1991, it is believed that their branches were preparing the 30 June 1991 quarterly financial returns to be sent to Abu Dhabi;**
- 9.3.3 With the closure of BCCI and Overseas and the local appointment in various jurisdictions of provisional liquidators, administrators, receivers and central bank appointees the system for submission of financial information ceased.**
- 9.4 Letters requesting the submission of returns for branches were issued jointly by the Central Credit Division of BCCI and Touche Ross & Co. in Abu Dhabi.**



- 9.5** Whilst approximately 50 per cent in number of the branches, representing 40 per cent in value of the loan book, have replied and submitted information, in many instances the local appointee has not supplied the requested information. This has made the exercise of establishing a detailed analysis of advances on a loan by loan basis difficult. Where 5 July 1991 information has not been received the Touche Ross Officeholders have used the latest available information in Abu Dhabi which in many cases is 31 March 1991. This has resulted in unavoidable inconsistencies in the financial data currently available.
- 9.6** The Touche Ross Officeholders' approach to the work performed on the loans has been as follows:
- 9.6.1** To establish systems so that, once full co-operation is achieved with the local appointees, they can ensure that the loan portfolios are properly managed with the aim of maximising loan recovery worldwide; and
- 9.6.2** To research the background and destination of any potentially suspect or manipulated loans.
- 9.7** Sales of some local branch operations have been completed, (see paragraph 8.5 above). This has involved the disposal of some parts of the worldwide loan book which are attributable to the local branch operations.



The residual portfolio

- 9.8 After the sales referred to in paragraph 9.7 above, there is a residual loan portfolio shown in the books totalling approximately US\$ 8 billion.
- 9.9 The Touche Ross Officeholders' work has been directed towards this anticipated residual loan book which is expected to comprise in excess of 12,000 accounts. The account holders are in all parts of the world;
- 9.9.1 A loans database has been established containing reviews of loans in excess of US\$ 100,000. This contains details of loans amounting to approximately 90 per cent of the total residual loan book;
- 9.9.2 The compilation of this database has been a lengthy exercise involving Touche Ross & Co working in conjunction with a team of BCCI employees. Details of underlying security, maturity dates, rates of interest and group connections have been extracted from the credit files and incorporated into the database.
- 9.10 By utilising the database, the Touche Ross Officeholders are able to identify customers who have loans from BCCI and Overseas operations in more than one country. The Touche Ross Officeholders consider that customer negotiations for these loans are more appropriately undertaken on a co-ordinated basis, for which purpose it will become necessary to identify the most appropriate jurisdiction from which to contact the customer and lead any negotiations.

9.11 An exercise is under way to estimate the realisable value of loans:

9.11.1 The exercise has been conducted on a loan by loan basis and involves the classification of each loan into one of a number of categories taking account of size, the financial strength of the customer, any security for the loan, and the current status of the account e.g. performing / non- performing;

9.11.2 Once each account has been classified, discount factors for each category have been applied to the book value of each loan in order to reflect the loss which would be likely to be occasioned on enforced realisation.

9.12 In the vast majority of countries where branches and subsidiaries of the BCCI Group are situated, the central banks and regulators have appointed officials to protect and control the assets of local branches. The Touche Ross Officeholders have attempted to open up lines of communication with the various local appointees, and have supplied the results of their review and offered assistance where possible. They have also requested the following information from the local appointee:

- 9.12.1 An assessment of the realisable value of the assets, including the loan portfolio, subject to his control;**
- 9.12.2 Details of any proposals or strategy for the realisation of the assets;**
- 9.12.3 Details of the powers duties and responsibilities which attach to the particular appointment.**



10 Preservation and realisation of assets (UK)

The earlier position in relation to the realisation of assets arising from UK operations is set out in paragraphs 43 to 47 and 54 of the Provisional Liquidators' Report dated 19 July 1991.

11 Inter-Bank Accounts

11.1 As at close of business on 5 July 1991 the BCCI UK Treasury investment portfolio amounted to £798.7m. The breakdown of this was as follows:

	<u>£ m</u>
Bank of England cash ratio	3.6
Due from third party banks (25 placements) (includes £182m Islamic Banking Unit placements)	298.0
Due from non-bank financial institutions (1 placement)	0.3
Due from affiliates (8 placements)	314.5
Certificates of Deposit	113.1
Nostros (49 accounts)	53.6
Marketable Securities (maturing Euro-Bonds and Securities)	15.6
	<u>798.7</u>

- 11.2 The BCCI UK Treasury also managed the statutory placements for BCCI, Isle of Man. As at close of business on 5 July 1991 these amounted to £19m, made up of five individual placements all with third party banks. 90 per cent of these funds have been, or are in the process of being, collected.
- 11.3 On 6 July 1991, the Provisional Liquidators appointed the Bank of England as their collection agency. Society for Worldwide Interbank Financial Telecommunication ("S.W.I.F.T.") messages were sent to all borrowers requesting repayment of funds as the deposits matured. Letters were also sent by courier to all nostro holders requesting repayment of the balances held.
- 11.4 The Provisional Liquidators have commenced an internal review of the BCCI UK and Isle of Man Treasury asset portfolio existing at close of business on 5 July 1991. The current position is considered in the following paragraphs.

Third Party Bank and Non-banking Financial Institutions (NBFI)

- 11.5 All UK third party bank and NBFI placements have been repaid with the exception of:
- 11.5.1 6 individual amounts (see further paragraph 11.7 below); and
- 11.5.2 All the Islamic Banking Unit ("IBU") Kuwaiti Dinar ("KD") placements.



11.6 These realisations amount to £66m or approx 55 per cent of the portfolio (excluding IBU). The Provisional Liquidators have also recovered all outstanding NBFIs loans made by BCCI Glasgow. These amounted to £2.8m.

11.7 The 6 outstanding placements are as follows:

- 11.7.1 Bank of Baroda (Bombay) - US\$ 50,000,000 (£30.7m). This amount is due to be repaid on 26 December 1991. There is doubt that it will in fact be repaid on that date. The funds were placed by BCCI (UK) to provide liquidity to BCCI India. Unless BCCI India pays Bank of Baroda the Rupee equivalent of US\$ 50,000,000 the Bank of Baroda has indicated that it will claim a set-off against the dollar placement;**
- 11.7.2 Royal Bank of Canada (Toronto) - US\$ 2,000,000 (£1.23m). The ownership of these funds is in dispute. Royal Bank of Canada contend that they are holding this deposit as set-off for performance guarantees issued by them on behalf of BCCI;**
- 11.7.3 Arab Banking Corp ("ABC") (Bahrain) - KD 2,000,000 (£4m). These funds are being rolled over by ABC. They are not prepared to repay either the principal or the interest. ABC is claiming a set-off against other BCCI group exposures to themselves;**

- 11.7.4 Banco Nacional de Cuba (Havana) - £1,875,225. The likelihood of recovery of this amount is remote. BCCI management had already made a 100 per cent provision against this placement prior to the provisional liquidation;**
- 11.7.5 United Bank of Kuwait (London) - KD 2,790,714 (£5.5m). The United Bank of Kuwait are claiming a set-off against outstanding guarantees given on behalf of BCCI through the IBU;**
- 11.7.6 Allied Bank of Pakistan (London) - US\$ 2.7m (£1.66m). The original placement was US\$ 10m. Allied Bank of Pakistan repaid US\$ 7.3m but are holding the balance claiming a set-off in respect of various claims against other BCCI entities.**

Due from Affiliates

- 11.8 The majority of the BCCI placements with affiliates were with Overseas (£261m) and BCC Canada (£15.4m). The former is in provisional liquidation. The latter, a subsidiary of BCCI, is now in liquidation in Canada.**
- 11.9 No funds have been collected from any Intra-group source. The total outstanding amount is £280.8m.**



Certificates of Deposit/Marketable Securities

- 11.10 Sterling CDs amounted to £35m. To date one CD of £1m has matured. The others are still held pending maturity. Their present market value is approximately £34m.
- 11.11 US Dollar CDs amounted to US\$ 125m (£77.7m). US\$ 40m of the portfolio was placed as security against a US\$ 40m borrowing from Overseas through the Central Treasury, Treasury Portfolio Management Division ("T.P.M.D"). These CDs were apparently subsequently used as "security" by T.P.M.D. under a repurchase agreement. The other US\$ 85m of CDs have been sold in the market for an amount of approximately US\$ 90m.
- 11.12 Marketable Securities amounted to £15.6m. The portfolio is largely made up of 2 Eurobonds with a face value of £10m. The Provisional Liquidators are trying to sell these assets. Both Eurobond issues are illiquid. The current market valuation is approximately £9.7m. Other securities held relate to Babcock Prebon PLC and Control Securities PLC equities. The current market value of these shares is uncertain. Babcock Prebon PLC is in Administrative Receivership. Dealings in Control Securities PLC equities have been suspended.

Nostro Reconciliations

11.13 BCCI has 49 Nostro accounts with foreign and UK banks. A nostro account is a bank's current account held with another bank through which they conduct their international business and clearing.

11.14 Each of the 49 nostro accounts has been reconciled.

11.14.1 In order to do this, statements had to be obtained from all the nostro holders. This has proved to be particularly difficult where other BCCI entities were involved. Responses have been slow and in some cases the Provisional Liquidators are still trying to get statements for 5 July 1991. Where this is the case the most recent statement date has been used for the purposes of reconciliation.

11.14.2 The list of reconciling items consists of approximately 4000 transactions all of which had to be investigated. Despite the assistance of BCCI staff this process was inevitably very time consuming. Delays were often caused whilst information was sought from the relevant nostro bank.

11.14.3 Once each item had been investigated and its nature established, it was necessary to decide how to treat it, i.e. whether it should be posted or reversed. Generally transactions fell into several categories; drafts issued and not presented, tested telexes, S.W.I.F.T. messages, bankers



payments etc, or items involving other business units, for example, Letters of Credit or Travellers Cheques.

11.14.4 Since most transactions involved other business units or UK branches, extensive communication between all the various units and branches was necessary to ensure that the treatment of the transaction was consistent and did not give rise to a reconciling item elsewhere. This was particularly true in relation to the Head Office/Regional Office/Management Office ("HO/RO/MO") accounts which provide the bridge between the branch's accounts and central unit's accounts.

11.15 The Provisional Liquidators have collected the funds from 4 of the nostros. Collecting other funds from this source is proving difficult. Recovery of the outstanding amounts in the short term may be difficult for the following reasons:

11.15.1 The difficulty in confirming balances with the overseas correspondent banks, and their claims to set off amounts held against various claims including their nostro accounts held at various BCCI entities;

11.15.2 The freezing action taken by various United States Federal and State Government agencies in relation to all US dollar balances held in New York;

11.15.3 The activities of US Banks in freezing funds held in their overseas branches (for example, Italy).



Reconciliation of Vostro Accounts

11.16 As at 5 July 1991 BCCI UK had 530 vostro accounts. A vostro account is another bank's current account held with the relevant BCCI banking entity. Of those, 325 were held for foreign banks and 175 for affiliates. The remaining 30 were branch accounts.

11.17 Statements have been produced showing the position of each vostro account at 5 July 1991. This involved ensuring that all incomplete international money transactions were identified and either reversed or processed. The closure of BCCI in the UK and elsewhere, during business hours, meant that this was necessarily a time consuming exercise.

Foreign Exchange Transactions

11.18 All foreign exchange transactions with value at 5 July 1991 were closed out with the following three exceptions:

11.18.1 Raiffeisen Bank (Vienna) - US\$ 1m. BCCI entered into foreign exchange transactions with Raiffeisen to sell Deutsche Marks ("DM") and buy US dollars. BCCI paid away the DMs, but only received US\$ 2m instead of US\$ 3m. Raiffeisen are claiming to set off the US\$ 1m against the liabilities of other BCCI entities;

- 11.18.2 Middle East Bank (London) - US\$ 500,000. BCCI entered into foreign exchange transactions with Middle East Bank, London to sell DMs and buy US dollars. BCCI paid away the DMs but did not receive the US dollars;**
- 11.18.3 Middle East Bank (London) - US\$ 125,000. BCCI entered into foreign exchange transactions to sell French Francs ("FF.") and buy US dollars. BCCI paid away the FF. but did not receive the US dollars.**
- 11.19 The last two amounts are being held by Middle East Bank against an outstanding claim against BCCI Abu Dhabi for US\$ 6m.**
- 11.20 Certain funds relating to other BCCI Group entities' foreign exchange transactions were paid into BCCI's sterling nostro account at National Westminster Bank on 5 July 1991. These amounted to some £15m. Claims relating to those amounts have been referred to the BCCI Group entity involved.**
- 11.21 No forward foreign exchange transactions were settled. The Provisional Liquidators advised the market through a general announcement by the Bank of England on 12 July 1991 that the Provisional Liquidators would be unable to meet BCCI's commitments under these forward transactions. In addition, the Provisional Liquidators sent letters to all BCCI customers who had taken out forward cover to advise them that BCCI would be unable to fulfil those commitments and suggesting that they obtain alternative cover.**



12 UK Loan Book

12.1 The major asset on the balance sheet of BCCI in the UK as at 5 July 1991 was the retail customer loan book ("the UK Loan Book"). This was shown as £1,067.6m.

12.2 The UK Loan Book can be summarised as follows:

	£000
Domestic lending	508.8
Employee loans	52.0
Loans with international connections	302.4
Problem loans	60.3
Loans in hands of solicitors	144.1
Total	1,067.6

12.3 At the time of the appointment of the Provisional Liquidators, there were 7,742 accounts of which 3,135 accounts related to employee and former employee loans.

12.4 The Provisional Liquidators took the view that the best method of protecting the UK Loan Book was not to attempt to undertake an immediate recovery of all outstanding loans. This could have destroyed a substantial number of businesses throughout the UK. It would probably

have resulted in a lower recovery for creditors than attempting to either sell or manage the Loan Book as a whole.

- 12.5 In the circumstances procedures were set up to enable customers to continue to operate other banking facilities with other banks whilst investigations into the UK Loan Book continued. A system was set up to overcome problems where customers of BCCI had given BCCI a fixed charge over book debts in order to enable them where appropriate to operate credit banking facilities with other banks.
- 12.6 The Provisional Liquidators explored the possibility of a sale of the Loan Book to either one or a number of the UK clearing banks. It became apparent at an early stage that a sale of the Loan Book en bloc would not be realistic.
- 12.7 As an en bloc sale was not a realistic possibility the UK Loan Book has had to be managed on a long term basis if realisations were to be maximised.
- 12.8 The Majority Shareholders instructed J Henry Schroder Wagg & Co ("Schroders") to prepare a report on the feasibility of restructuring BCCI in the UK and on the present state of the UK Loan Book.
- 12.9 The Provisional Liquidators were concerned not to take any irrevocable steps in relation to the UK Loan Book pending the submission of the Schroders' report.

12.10 Accordingly, on 27 September 1991 directions were obtained from Sir Nicolas Browne-Wilkinson VC permitting the Provisional Liquidators not to take any steps to implement irreversible management arrangements in relation to the UK Loan Book pending the outcome of Schroders' Report.

12.11 Schroders reported to the Majority Shareholders at the end of September 1991. Following that report, Schroders indicated that they wished to explore further with the Provisional Liquidators the means for the most effective realisation of the UK Loan Book. Their suggestions included:

- a) A sale of the UK Loan Book to a third party purchaser;
- b) A scheme for the management of the UK Loan Book by a third party responsible to the Provisional Liquidators (this had previously been the Provisional Liquidators' preferred course of action).

12.12 On 2 October 1991, Sir Nicolas Browne-Wilkinson VC directed the Provisional Liquidators to explore with Schroders the means for the most effective realisation of the UK Loan Book.

12.13 A number of meetings were held between Schroders and the Provisional Liquidators.

12.14 Schroders agreed with the Provisional Liquidators that the UK Loan Book was not capable of being sold as a whole or of being managed by a third party. Consequently, subsequent discussions with Schroders



focused on a relatively small part of the UK Loan Book in terms of value, consisting of all loans of less than £1m, which was considered capable of being effectively marketed.

12.15 A list of 8 potential purchasers was agreed with Schroders. Following discussions with the Bank of England each potential purchaser was approached and provided with a memorandum of information. Only one of these institutions expressed any serious interest and they were only interested in considering customers of BCCI who had been previously involved in the import/export sector. Meetings have subsequently been held with that institution but no sale has yet been negotiated.

UK Loan Division

12.16 The Provisional Liquidators have established a UK loan division utilising the full time assistance of a former director of Group Credit Control at National Westminster Bank Plc.

12.17 The division consists of personnel from Touche Ross & Co, former BCCI employees and a number of clearing bankers on secondment. The following departments have either been established or are in the process of being established:

1. a special situations department (loans greater than £1m).
2. a loan management department (ongoing loans of less than £1m).



3. a loan recovery department (recovery proceedings against customers).
4. a legal department.
5. a staff and former staff loans department.
6. a credit card loans department.

12.18 To date, some £97m has been recovered of which £20m represents a realisation of a loan in BCCI's books in the UK but which is claimed by Overseas: this realisation has been placed in a separate account pending resolution of claims to these funds. Action is continuing to recover balances outstanding.

Nigerian Sovereign Debt

12.19 The Nigerian Sovereign Debt was the largest single asset in the UK Loan Book. This was booked with BCCI's Cannon Street branch. The total amount due to BCCI under the March 1989 Refinancing Amendment Agreement between certain Nigerian sovereign borrowers and their bank creditors was a combination of some US\$ 172m, £12m and DM2.8m.

12.20 The Provisional Liquidators retained Charterhouse Bank Limited to advise them on how best to deal with the Nigerian Sovereign Debt. Nigerian Sovereign Debt trades at a substantial discount to face value on the secondary market and the market price is approximately 40-42 per cent.

12.21 On 29 October 1991 Sir Donald Nicholls VC gave directions to the Provisional Liquidators to realise the Nigerian Sovereign Debt as and

when they considered it appropriate, at the best price available. The Provisional Liquidators subsequently received a cash offer for the Nigerian Sovereign Debt of £54.8m which they accepted.

Problem Loans

12.22 The Provisional Liquidators have employed a team of bankers to conduct a review of problem loans. These include many of the largest 140 loans in the portfolio and consist in the main part of loans in excess of £1m. Work is continuing on these loans to enable realisations to be maximised.

12.23 Prior to the appointment of the Provisional Liquidators, the accounts of approximately 300 customers had been passed to the legal department of BCCI. The accounts of these customers have now been reviewed and action to recover these loans is being taken.

Islamic Banking Unit

12.24 BCCI's Islamic Banking Unit ("IBU") operated as a separate branch of the UK operations and was based at 100 Leadenhall Street, London.

12.25 The Provisional Liquidators are continuing to examine the books and records of BCCI in respect of these IBU transactions.



Employee Loans

12.26 The position in relation to employee loans is as follows:

Home (purchase) Loans	877 employees	£45,680,000
Other loans	995 employees	£ 6,763,000

12.27 After 5 July 1991, deductions were made from salaries payable to employees in accordance with the system operating before that date.

12.28 On 3 October 1991, most BCCI employees were made redundant.

12.29 Many of the loans to employees were made at preferential interest rates below normal commercial rates. Under BCCI's standard form of Contract of Employment, these preferential rates ceased on redundancy. A moratorium has been granted to all employees made redundant on 3 October 1991 in respect of the additional interest until 31 December 1991. In January 1992 commercial rates of interest will be applied to all outstanding loans to ex-employees.

12.30 As at 19 November 1991 some £900,000 had been received in respect of the redemption or reduction of loans made to employees and ex-employees.

13 Visa / Mastercard

- 13.1 The BCCI credit card operation was based at Haywards Heath and the majority of the credit cards were issued to persons in the United Kingdom.**
- 13.2 On 5 July 1991 there were some 89,000 credit cards in issue, on which approximately £28m was owed. The majority of the credit cards were cleared through the Mastercard network, with the remaining smaller portion being cleared through the Visa network.**
- 13.3 The Provisional Liquidators took the view that there were 3 options, viz:**
- 13.3.1 The sale of the credit card operation as a going concern;**
 - 13.3.2 The transfer of responsibility for collection to a commercial debt collection agency; or**
 - 13.3.3 The collection of the debt using BCCI card centre employees under the supervision of the Provisional Liquidators.**
- 13.4 Negotiations were entered into with 17 parties for the sale of the credit card operations. Detailed negotiations took place with 4 of these parties. The negotiations failed because the price indications received were considered to be significantly below the value likely to be achieved by the realisation of individual debts.**



- 13.5 The Provisional Liquidators also negotiated with, but ultimately rejected, the possibility of any arrangements with commercial debt collection agencies. The requirements of these agencies would have resulted in the payment of collection commission of between 20p and 30p in the £ of monies actually recovered.
- 13.6 The Provisional Liquidators therefore proceeded with the third option, collecting the outstanding debt using supervised BCCI card centre employees. Debts are being collected under the terms of the agreements that existed on 5 July 1991, which require the cardholder to pay a minimum of 5 per cent of the balance outstanding on each monthly statement. It follows that the collection of credit card monies may take some time.
- 13.7 Cash collections to 19 November 1991 totalled £11.8m, at an estimated cost of approximately 5p in the £. The current debt outstanding including interest is approximately £18m.

14 Travellers Cheques

- 14.1 BCCI operated a major international Travellers Cheque operation under the VISA mark. The operation was managed by BCCI, but owned by Overseas.
- 14.2 At 5 July 1991, approximately US\$ 770m of travellers cheques were held as stock, either with the printers, in transit, or with selling agents. An



estimated US\$ 77m travellers cheques had been sold but not encashed, and up to US\$ 12m was owed by selling agents.

14.3 The Provisional Liquidators' initial priorities, in relation to the travellers cheques business, were to:

14.3.1 Identify and reduce outstanding risks presented by the unsold stock of travellers cheques;

14.3.2 Initiate a programme of reconciliation and destruction of unsold cheques;

14.3.3 Identify and chase debtors;

14.3.4 Note claims received from potential creditors (ie. holders of BCCI travellers cheques).

14.4 In paragraphs 54.1 and 54.5 of the Report dated 19 July 1991 reference was made to negotiations under way for the sale of BCCI's travellers cheques business. These negotiations fell through and it did not prove possible to sell the business.

14.5 The Provisional Liquidators were accordingly invited by the Provisional Liquidators of Overseas to wind down the operation and to take such steps as were necessary to ensure that future claims could be assessed.

14.6 All sales agents and BCCI branches have been contacted and asked to reconcile stocks of unsold travellers cheques. In many countries,

including all those where there was thought to be a high risk of misuse, stocks have been secured and destroyed.

14.7 The Provisional Liquidators have identified funds due relating to sold travellers cheques to the value of US\$ 12m. To date US\$ 3.7m has been recouped.

14.8 Claims relating to unpaid travellers cheques are expected to total some US\$ 77m.

15 Letters of credit

15.1 A significant proportion of the business of BCCI's UK operation consisted of trade finance, including both import and export letters of credit and bills for collection.

15.2 Of BCCI's 1,221 UK employees, some 120 were engaged full time in trade finance matters in London. Trade finance business also constituted a significant part of the business of each of BCCI's 4 provincial UK branches. On the closure of BCCI on 5 July 1991 there were in excess of 5,000 live letters of credit files in varying stages of completion which required attention. The category requiring most immediate attention was that where BCCI was holding documents of title, principally bills of lading, at 5 July 1991. It was expected that the majority of the remaining letters of credit would expire unadvised. The total value of documents held, comprising 473 separate sets of documents, amounted to some £41.8m.



Initial steps

15.3 The Provisional Liquidators:

- 15.3.1** Set up a Documentary Credits team including both Touche Ross & Co. staff and 20 clearing bank secondees with specialist experience. This level of staffing has had to be maintained since that date;
- 15.3.2** Set up a specific "letters of credit helpline" in order to identify promptly particular problems caused in this area by the closure of BCCI; and
- 15.3.3** Established a comprehensive computerised database of outstanding foreign trade transactions in which BCCI had been involved, as no such record had been kept prior to 5 July 1991. Such a database enabled individual transactions to be identified and the various categories to be accorded due priority.

15.4 The Provisional Liquidators considered that it was important, so far as possible, to minimise the disruption caused to third parties by BCCI's closure as a result of delay in obtaining the goods to which the documents related.

15.5 However, documents could not be returned until it was possible to establish that BCCI had no interest in them and clear instructions for



release had been obtained from the person who had been established to be the beneficial owner.

Export letters of credit

- 15.6 It became apparent that the largest group for which documents were held by BCCI was UK exporters for whom BCCI had been collecting funds in its capacity as correspondent banker.
- 15.7 This category has been given priority, and priority was also given to other transactions of large amounts or in clear cases of hardship.
- 15.8 Of the total of 216 sets of export documents held, with a value of some £5.5m, the Provisional Liquidators sought instructions and consents from the appropriate parties in all but 4 cases where there are complications caused by the customer's other accounts with BCCI.
- 15.9 Instructions for release have been received and release actioned in 115 instances, with a combined value of some £3.2m.
- 15.10 Where it has been established that a third party is beneficially entitled to monies held by another bank to the order of BCCI, on which the Provisional Liquidators have no claim, instructions have been given for the payment of such monies directly to the beneficiary. The amount for which such instructions have been given is some £3m. Clearances and consents are currently being obtained in order that instructions may be given for the payment of further monies in the amount of some £3.7m. directly to the beneficiaries.



Import Letters of Credit

15.11 Due to the fact that most of the importers affected had account relationships with BCCI, it was necessary to review the overall customer position before action could be taken in respect of documents held on import letters of credit.

15.12 Import documents were held at 5 July 1991 for 71 customers, with a value of some £33.7m. Documents of 35 customers with a combined value of some £22.3m have now been cleared. The remaining cases have been delayed by complications caused by the overall position of that particular customer's accounts with BCCI.

Financed bills of exchange

15.13 BCCI's records indicated that it had financed bills with a total value of some £34.9m., relating to 84 identified parties. In relation to 40 per cent by value of this balance, direct contact has been made with the relevant parties to seek payment of the funds. In relation to a further 40 per cent by value of these items, it appears that the financing occurred some years ago, and some doubts exist over the collectibility of these balances. These and the remaining items are currently under review.

Future action

15.14 The principal area still requiring significant resources involves "clean collections" (i.e. collections of financial documents not accompanied by commercial documents) which have not been financed. Approximately 1,900 collection items with a total value of some £55m remain unresolved. Where BCCI has a beneficial interest in the proceeds of collection, remittance of funds is being pursued. In all other cases steps are being taken to ensure that the collections are settled to the satisfaction of interested parties.

16 Securities and redemptions

- 16.1 Since 5 July 1991, the Provisional Liquidators have received in excess of 500 requests from customers of BCCI to redeem security which they had previously granted to BCCI. The hardship caused to such secured borrowers was referred to in paragraph 46 of the Report dated 19 July 1991.
- 16.2 The Provisional Liquidators considered it important that, where possible, customers should be able to redeem their security so as to enable them to secure the facilities that they needed from their new bankers and, so far as was possible, to minimise some of the disruption which the collapse of BCCI had caused.
- 16.3 A number of practical problems arose in attempting to enable customers to redeem their security:



- 16.3.1** As stated in paragraph 35 of the Report dated 19 July 1991, immediately the Provisional Liquidators were appointed BCCI's computer system was closed down to prevent unauthorised transactions and to secure the information base. A large number of transactions were only partly completed and, until they had been identified and entered on the system and the system reconciled, it was not possible to determine accurately the state of the customer's account with BCCI;
- 16.3.2** Many of BCCI's customers have worldwide interests and used the facilities of BCCI in a number of jurisdictions. The account records of customers who appear to be based in England do not necessarily indicate the true level of indebtedness of such customers;
- 16.3.3** BCCI's records of security documentation were, in many respects, patchy or incomplete. In relation to each customer who wished to redeem his security, it was necessary to locate and assess the relevant security documentation.
- 16.4** In addition, many customers sought to set-off certain alleged liabilities of BCCI against the debt which they owed BCCI. A number of legal issues arose and on 26 August 1991 the Provisional Liquidators sought and obtained directions from Sir Nicolas Browne-Wilkinson VC dealing with certain of these difficulties.

- 16.5 Since 5 July 1991 the Provisional Liquidators have redeemed security for 60 domestic lending customers as follows:**

Redemptions where funds collected	37
Redemptions - no funds collected	<u>23</u>
	<u>60</u>
	= =
 Receipts in respect of redemptions total	 £7,471,000

- 16.6 The remaining redemption requests have reached various stages of completion as follows:**

- 16.6.1** There are 35 redemptions where legal advice is being sought;
- 16.6.2** There are 59 enquiries which have been sent through to solicitors to redeem security and collect funds from customers;
- 16.6.3** There are 112 customers from whom the Provisional Liquidators are awaiting further advice regarding whether to proceed with the redemption;
- 16.6.4** There are 115 enquiries where no redemption is now requested;
- 16.6.5** There are 137 requests currently being reviewed with a view to determining whether a redemption can be granted.



17 UK branches - Disposal of Premises

17.1 Details of BCCI's UK branch network as at 5 July 1991 are set out in paragraph 39 of the Report dated 19 July 1991. The network included 2 large branches in the City of London, 15 other operating branches in London and 5 operating branches around the country.

17.2 BCCI had 43 properties in the UK, consisting of 34 branch premises, 7 head office premises, a house and a flat. 31 of those premises were leasehold. The remainder were freehold.

Initial steps

17.3 Immediately prior to 5 July 1991:

17.3.1 A total of 14 branch properties (10 leasehold and 4 freehold) and one of the Head Office premises (31 Bury Street) were regarded as surplus to BCCI's requirements. BCCI was no longer in occupation of those premises;

17.3.2 The balance of 20 branch properties (15 leasehold and 5 freehold) and 5 Head Office premises and the flat were used by BCCI.

17.4 The Provisional Liquidators have not taken any steps to use branches which, as at that date, were no longer being used by BCCI. A small team of Touche Ross & Co. staff was maintained at each branch which

was operational on 5 July 1991 (principally in order to deal with questions arising on particular loans booked at that branch and with questions arising as to the depositors' balances for the purpose of the Majority Shareholders deposit protection scheme).

Schroders report

- 17.5 The rent on many of the leasehold properties was paid quarterly in advance. As at 5 July 1991 the rent in relation to most of those properties had been paid up to and including 28 September 1991. The cost of retaining the properties was some £6m each quarter.
- 17.6 Given such accruing costs, in other circumstances, the Provisional Liquidators would have taken steps to close the branch network and to dispose of the surplus properties.
- 17.7 Such a course was not, however, appropriate in the light of the instruction of Schroders by the Majority Shareholders referred to in paragraph 12.8 above. Accordingly on 27 September 1991 Sir Nicolas Browne-Wilkinson VC gave directions permitting the Provisional Liquidators not to take any steps to vacate or dispose of any of the leasehold properties pending the outcome of the Schroders report.
- 17.8 The Majority Shareholders informed the Provisional Liquidators on the basis of the Schroders report:



17.8.1 That a restructuring of the UK branch network was not possible; and

17.8.2 That any properties not required for the management of the Loan Book could be disposed of.

17.9 On 2 October 1991 the Provisional Liquidators therefore obtained directions from Sir Nicolas Browne-Wilkinson VC to take steps to vacate and dispose of the branch premises other than those which might be required to remain operational to service the UK Loan Book.

The present position

17.10 The Provisional Liquidators consider that it will be necessary to retain 6 properties for the effective management of the UK Loan Book.

17.11 Since 2 October 1991 the Provisional Liquidators have taken steps to consolidate the records of the branch network in these 6 properties.

17.12 The Provisional Liquidators have started to dispose of the remaining properties. All branches have been placed on the market or, in the case of onerous properties, offered for surrender. The present position is as follows:

17.12.1 The operational branch at 25 Park Lane has been sold for £10.5m;



- 17.12.2 Contracts for the sale of the non-operational branches at Blackburn and Birmingham, Soho Road have been issued to prospective purchasers;
- 17.12.3 Surrenders have been completed in respect of properties in Leicester, Kilburn, Green Park, Slough, Wembley and High Street, Kensington;
- 17.12.4 Surrenders for the properties at Trafalgar Square and at Curzon Place are nearing completion.

18 UK Employees: Majority Shareholders employee scheme

Summary of position

- 18.1 In summary the position in relation to employees since 5 July 1991 is as follows:

Employed as at 5 July 1991			1221
at 31 Oct 1991			180
Payroll:	Jul	1991	£2.1m
	Aug	1991	£2.1m
	Sep	1991	£2.0m
	Oct	1991	£0.8m
	Nov	1991	£0.3m

Redundancy and Payroll

- 18.2** As stated in paragraph 48 of the Report dated 19 July 1991 all members of staff employed in the UK by BCCI at 5 July 1991 were initially retained, although the large majority were sent home.
- 18.3** The Provisional Liquidators made funds available to pay each employee's salary from 1 July 1991 until the earlier of 31 July 1991 or formal redundancy.
- 18.4** Since many employees maintained only BCCI bank accounts (which had been frozen) arrangements were made for a salary advance in cash on 16 July 1991 (totalling £228,000). These payments were made to maintain employee goodwill and co-operation which were essential to the Provisional Liquidators' efforts.
- 18.5** The July 1991 payroll totalled £2.1m. It included overtime earned in June but not paid and all paid benefits in accordance with the terms of the employees' contracts.
- 18.6** Following the hearings of the petition to wind up BCCI on 22 and 30 July 1991, the Majority Shareholders agreed to fund the BCCI payroll for UK and Isle of Man employees from 1 August 1991 onwards ("the UK Employees Remuneration Fund").
- 18.7** On 3 October 1991, following the Schrodgers report to the Majority Shareholders and the consequential termination of the UK Employees Remuneration Fund, all those UK

employees not specifically required, amounting to some 918, were made redundant.

18.8 On the same day, a UK Employees Dismissal Fund was established by the Majority Shareholders:

18.8.1 £3m was transferred to the trustees, The Law Debenture Trust Corporation p.l.c., to fund advances to the employees of all amounts which they would have received from the National Insurance Fund, had BCCI been in liquidation at the time of dismissal (i.e. statutory claims made under the Employment Protection (Consolidation) Act 1978);

18.8.2 Christopher Morris was appointed administrator of this Fund.

18.9 The remaining 180 members of staff are actively employed, assisting the Provisional Liquidators in their work.

18.10 The payroll cost from 3 October 1991 onwards, equating to approximately £0.3m per month, is being met out of the funds held by the Provisional Liquidators.

Staff pension scheme

- 18.11 Independent trustees, WCL Trustees Ltd ("WCL"), have been appointed to the Bank of Credit and Commerce International Staff Pension Scheme. They continue to employ an administrator based at the Human Resources Department of BCCI, in Cannon Street.
- 18.12 It is understood that WCL believes that the Staff Pension Scheme is more than adequately funded.

General

- 18.13 The Health First Medical Care Scheme was in arrears at 5 July 1991 and cover was therefore withdrawn by the insurers, Sun Alliance. Negotiations were entered into by the Provisional Liquidators with Sun Alliance who have recently agreed to meet all claims for health care received prior to 5 July 1991.
- 18.14 Regular meetings have been held with members of the Employees Committee, and B.I.F.U. (the employees union).

19 Depositors; Majority Shareholders' deposit protection scheme

- 19.1 Following the hearings of the petitions to wind up BCCI on 22 and 30 July, a fund was established by the Majority Shareholders for the benefit of small depositors to alleviate hardship that would be caused to them by reason of the Depositors Protection Scheme under the Banking Act 1987 not coming into immediate force.
- 19.2 On 7 August 1991, £42m was transferred by the Majority Shareholders to The Law Debenture Trust Corporation p.l.c., following the formation of, and the appointment of, the latter as trustees over, the "Government of Abu Dhabi BCCI UK Depositors Protection Fund". Christopher Morris was appointed as Administrator of this Fund.
- 19.3 The Fund provides for the payment of 75 per cent of a customer's UK Sterling deposit, limited to one payment per claimant and to a maximum payment of £5,000.
- 19.4 Claim Forms for each individual account, including nil balances, were despatched to current/deposit account holders on 9 August 1991 as follows:



	<u>Approx Numbers</u>
Total Deposit and Current Accounts	53,000
Accounts with specific instructions for no correspondence to be mailed to Customer	(12,000)
Incomplete/Insufficient address	<u>(1,000)</u>
Claims form despatched	<u>40,000</u>

In addition, approximately 13,000 further claim forms have been sent out, in response to specific enquiries received.

Claims have been received as follows:

	<u>Approx Numbers</u>
Claims received at Nov 1991	13,700
Rejected - Duplicate forms or Non-Sterling Accounts	(1,000)
Returned - Incomplete information or incorrectly completed	<u>(2,000)</u>
Passed for Processing	<u>10,700</u>

Claims have been processed to date as follows:

In Progress	3,338
Paid - £14.7m.	6,565
Nil Balance after set-off	<u>797</u>
	<u>10,700</u>

20 United States of America**S. 304 Proceedings**

- 20.1 The petitions filed by various court appointed officers of BCCI Holdings, BCCI and Overseas pursuant to 11 U.S.C. Section 304 in the United States Bankruptcy Court, Southern District of New York ("the S. 304 Proceedings") were referred to in paragraphs 5 to 9 of the Report to the Court dated 23 August 1991.
- 20.2 A hearing was due to be held on 16 October 1991 to determine, inter alia, whether the temporary restraining order granted in favour of the petitioners in the S. 304 Proceedings should be converted into a preliminary injunction. That hearing has been subsequently adjourned on a number of occasions. It is currently fixed to be heard on 13 December 1991.
- 20.3 At the direction of Judge Garrity, counsel for the petitioners in the USA has been attempting to settle the objections of various parties raised in the S.304 Proceedings. In pursuance of this direction, the petitioners, on the advice of their US counsel, entered into agreements with the States of California and New York, contained in a Court Order



entered on 15 October 1991, under which the petitioners agreed that the State Superintendents of Banking in California and New York be permitted to conduct their respective state court liquidation procedures (settling the claims of valid state claimants). Depositors and creditors of the New York and Californian agencies of BCCI are required to file claims with the respective Superintendents. Any surplus assets held by the New York and Californian Superintendents are to be turned over to the Bankruptcy Court in due course. A settlement has also been concluded by the petitioners with VISA.

- 20.4 Discussions are continuing with other parties who are objecting to the S. 304 Proceedings with a view to determining whether their objections may be settled.
- 20.5 The Liquidator of the Japanese branch of BCCI (Mr Kugisawa) and the Liquidator of the Panamanian branches of Overseas (Carlos F. Sanchez Fabrega) have commenced their own S. 304 proceedings in the Bankruptcy Court in the Southern District of New York. Counsel for the Japanese Liquidator has informed the petitioners' counsel that Mr Kugisawa is effectively obliged under Japanese law to take these proceedings and has stressed that Mr Kugisawa is not hostile to the petitioners. A similar stance has been taken by the Panamanian Liquidator. The New York Superintendent of Banks has moved to dismiss the Japanese Liquidator's petition. Objections have to be filed

with the Bankruptcy Court by 4 December 1991. No date has yet been fixed for the hearing of the motion to dismiss.

- 20.6 An Interpleader Action was commenced by Bank of America in an attempt to bring all competing parties into a single action to resolve all disputes regarding approximately US\$ 176m of funds held by Bank of America. Pursuant to a Consent Order made on 15 October 1991, the Interpleader Action may proceed without restraint from the temporary restraining order in the S. 304 Proceedings. The Petitioners' Answer in the Interpleader Action is due on 10 January 1992.

Criminal Investigations and Proceedings

New York Investigations and Proceedings

- 20.7 The District Attorney of the County of New York has been carrying out an investigation into the affairs of the BCCI Group. On 26 July 1991, a New York State grand jury returned an indictment charging 5 BCCI entities and 2 individuals with various offences. The entities named as defendants are BCCI, Overseas, BCCI Holdings, ICIC (Overseas) Ltd (a Cayman registered company which is in provisional liquidation with Ian Wight and Robert Axford as provisional liquidators) and ICIC (Holdings) Limited



(which is not in provisional liquidation). The individuals named as defendants are Agha Hasan Abedi and Swaleh Naqvi. The indictment charges each BCCI entity with 1 count of scheming to defraud in the first degree and 3 counts of grand larceny in the first degree. In addition, BCCI is charged with 8 counts of falsifying business records in the first degree.

- 20.8 The initial court appearance at which the defendants would be asked to plead guilty or not guilty (the "arraignment") was scheduled for 19 August 1991. The arraignment has been adjourned on several occasions. On 25 October 1991, ICIC (Holdings) Ltd pleaded not guilty to the charges in the indictment. The arraignment is next due to take place on 13 December 1991.

Federal Investigations and Proceedings

- 20.9 On 15 November 1991, a Federal Grand Jury in the District of Columbia returned an indictment charging BCCI Holdings, BCCI, Overseas, ICIC (Overseas) Limited, Agha Hasan Abedi, Swaleh Naqvi and Ghaith Pharaon, with conspiracy to defraud and to violate various United States laws and with racketeering conspiracies.

Proceedings instituted by the Federal Reserve Board**(a) First American Bankshares**

20.10 On 29 July 1991, the Board of Governors of the Federal Reserve ("the Federal Reserve Board") issued a Notice of Charges ("the First Notice") against BCCI Holdings, BCCI, Overseas, ICIC (Overseas) Ltd and 9 individuals, contending that these individuals and entities secretly made arrangements to acquire control of First American Bankshares. The First Notice includes the assessment of a US\$ 200m civil money penalty against BCCI and its related banks and companies. The assessment does not create an obligation to pay until there is an administrative finding on the charges.

20.11 The First Notice scheduled a hearing for 10 September 1991, which the Federal Reserve Board, at the request of counsel for BCCI and the other companies, has agreed to adjourn from time to time. The next hearing is scheduled for 20 December 1991.

(b) Independence Bank

20.12 The Federal Reserve Board issued a Notice of Charges on 13 September 1991 against Ghaith Pharaon, Agha Hasan Abedi, Swaleh Naqvi, and Kemal Shoaib ("the Second Notice") asserting that they were involved in the secret



acquisition by BCCI (and related entities) of Independence Bank, Encino, California. The Second Notice includes the assessment of a US\$ 37m civil money penalty against Ghaith Pharaon.

Summary of current position in the United States

- 20.13 The assets of BCCI and Overseas in the USA have a potential realisable value of several hundred million dollars. BCCI and Overseas face the prospect of very heavy fines and civil money penalties in the USA. The Touche Ross Officeholders together with their US attorneys are doing all that they reasonably can to attempt to maximise a return to creditors from the assets of BCCI and Overseas held in the USA.

21 The Bingham Inquiry

- 21.1 The inquiry of the Right Honourable Lord Justice Bingham into the supervision of BCCI ("the Inquiry") was established at the end of July 1991 at the request of the Chancellor of the Exchequer and the Governor of the Bank of England. The terms of reference of the Inquiry are:

"To inquire into the supervision of BCCI under the Banking Acts; to consider whether the action taken by all the U.K. authorities was appropriate and timely; to make recommendations."

- 21.2 On 6 August 1991, Sir Nicolas Browne-Wilkinson VC directed that the Provisional Liquidators be at liberty to assist the Inquiry by the provision of information to the Inquiry. The Treasury has agreed to reimburse the Provisional Liquidators for costs incurred by them in assisting the Inquiry, up to an initial limit of £100,000.
- 21.3 The Provisional Liquidators have provided documentation to the Inquiry and they and their solicitors have been in regular contact with the Inquiry to discuss the provision of information which might be of assistance to the Inquiry.
- 21.4 On 19 November 1991, Sir Donald Nicholls VC gave directions to the Provisional Liquidators concerning the Inquiry. These included an authorisation and direction that they disclose to the Inquiry information relating to the affairs of BCCI relevant to the terms of reference of the Inquiry, notwithstanding that such information might be confidential, with the proviso that, in the event that such information related to a person who might have a right to invoke the banker/customer right of confidentiality, the Provisional Liquidators were to disclose such material to the Inquiry only if specifically requested by the Inquiry to do so.

- 21.5 The Provisional Liquidators have sent letters to employees and former employees of BCCI explaining their position as regards the provision of information by them to the Inquiry.**

22 Communication to creditors

- 22.1 The Provisional Liquidators have sought to ensure, to the extent that it has been possible and practicable, that creditors of BCCI have been informed of the general progress of the Provisional Liquidation.**
- 22.2 The number of creditors involved has however not made this easy. The BCCI Group has about 800,000 depositors worldwide with about 1,200,000 accounts. BCCI and Overseas themselves have some 250,000 depositors worldwide with about 370,000 accounts.**
- 22.3 The Provisional Liquidators have also been concerned not to favour (or to be thought to favour) any particular group of creditors, nor to encourage rumour and speculation. Communications have been made even more complicated by the negotiations in Abu Dhabi and by the circumstances of absolute confidentiality in which those negotiations have been taking place.**



- 22.4 Copies of the Provisional Liquidators' earlier Reports, in particular the Report dated 19 July 1991, have been made available to creditors on request.
- 22.5 A number of meetings have been held between Lovell White Durrant and Richards Butler, who represent the BCCI Depositors' Protection Association. Requests for information have been presented and answered so far as has been possible. Both Brian Smouha and Christopher Morris have been present at some of those meetings. Discussions have also taken place between Dr. Adil Elias, the Chairman of the BCCI Depositors' Protection Association, and Christopher Morris.
- 22.6 The Provisional Liquidators have also taken steps to consider whether, and if so how, an informal, cost effective and representative committee of worldwide creditors could be established. To this end communications have taken place with various of the firms of solicitors representing a number of the creditors. Those communications are continuing.
- 22.7 This Report has been prepared with a view to keeping creditors informed to the fullest extent practicable having regard to the interests of the overall conduct of the provisional liquidation.

**C. FINANCIAL POSITION****23 Financial position as at 30 June 1991 based on Group accounts**

- 23.1 In this section there is set out the financial position as at 30 June 1991 of BCCI Holdings, BCCI and Overseas ("the BCCI Group") and of BCCI and Overseas ("BCCI/Overseas") as disclosed in various accounting documentation maintained by the BCCI Group. In paragraphs 24.1 to 24.21 below are set out the current estimates of the possible outcome in the event of a liquidation of BCCI and Overseas.
- 23.2 The following table shows an outline comparison of the financial position of the BCCI Group as disclosed in the last audited accounts at 31 December 1989 and the book figures of the assets and liabilities of the BCCI Group based on unaudited management accounts as at 30 June 1991. The table also contains reconciling items which allow the book figures for BCCI/Overseas to be derived as at 30 June 1991.

	Total assets US\$m	Total liabilities US\$m
BCCI Group audited financial information as at 31 December 1989	<u>23,518</u>	<u>22,444</u>
BCCI Group book figures (unaudited) as at 30 June 1991	16,984	16,728
Less: BCCI Holdings book figure as at 30 June 1991	(456)	(15)
Add: Liabilities of BCCI/Overseas to BCCI Holdings as at 30 June 1991	-	719
Less: Book figures of other subsidiaries and affiliates as at 30 June 1991 and BCCI and Overseas branches sold to-date	(5710)	(5929)
Book figures as at 30 June 1991 of BCCI/Overseas	<u>11,730</u> =====	<u>11,503</u> =====

23.3 **A summary of the results of the BCCI Group appearing in the audited accounts of BCCI Holdings, BCCI and Overseas for the years ended 31 December 1987 to 1989, unaudited accounts for the year ended 31 December 1990 and**



management accounts for the period ended 30 June 1991 appears at Appendix 3.

- 23.4 The last published audited financial information in respect of the BCCI Group at 31 December 1989 showed group assets of US\$ 23,518m and group liabilities of US\$ 22,444m with shareholders capital, the difference between group assets and liabilities, of some US\$ 1,074m. The management accounts at 30 June 1991 representing the latest financial information available indicate that group assets had decreased to US\$ 16,984m and liabilities to US\$ 16,728m.
- 23.5 The accounting records in Abu Dhabi would appear to indicate that substantial losses were incurred during the 18 month period to 30 June 1991. These losses largely eliminated the reported US\$ 1,074m of shareholders' capital as at 31 December 1989 and the additional US\$ 400 million of capital injected into the group by the Majority Shareholders during the period ended 30 June 1991.
- 23.6 The reduction in the BCCI Group assets of US\$ 23,518m and the BCCI Group liabilities of US\$ 22,444m between 31 December 1989 (as disclosed in the audited accounts) and 30 June 1991 (as disclosed in the management accounts) to US\$ 16,984m and US\$ 16,728m respectively would appear to have arisen principally from losses incurred and the substantial fall in deposits held. Deposits held at

31 December 1989 were reported as US\$ 18,800m and according to management accounts had decreased by 30 June 1991 to US\$ 13,300m. The reduction in liquidity arising from the losses and decrease in deposits during the period to 30 June 1991 is reflected in the reduction in placements with correspondent banks and holdings of other liquid investments which fell in the same period from US\$ 12,400m to US\$ 5,800m.

24 Possible outcome in the event of liquidation

- 24.1** An estimate of the realisability of assets and quantification of liabilities in the event of liquidation requires the estimation of the realisable value of assets on a break up basis less costs arising on liquidation and the inclusion within liabilities of contingencies and other unrecorded claims. As with all liquidations the realisable value of the assets and the extent of the liabilities can only be known nearer the conclusion of the liquidation. The financial information in this section is subject to very considerable uncertainty.
- 24.2** In the particular circumstances of this case, the uncertainties inherent in any liquidation are significantly increased by the nature of the operations of the BCCI Group, and in particular the following:



24.2.1 The size and geographic spread of the BCCI Group, in 69 countries, is illustrated in the summary of the corporate structure set out below and in the organisation chart at Appendix 1. Each territory is subject to a different legal system and a number to foreign exchange restrictions:

<u>BCCI</u>	<u>Overseas</u>	<u>BCCI Holdings other subsidiaries and affiliates</u>
47 branches 13 countries	63 branches 28 countries	260 branches 30 countries

24.2.2 The international banking activities create further complications in addition to those posed by any large cross-border insolvency. The trading activities of the BCCI Group companies were often very closely interlinked. The BCCI Group has incurred many contingent liabilities which may be expected to crystallise on liquidation;

24.2.3 The countries in which the BCCI Group operated were subject to many different banking regimes, financial regulations and political considerations;

24.2.4 The diversity of appointments and nature of such appointments following the actions taken by the various authorities in July 1991 give rise to problems of cooperation and co-ordination on a worldwide scale.

24.3 The estimates in this section are based on the best available information and reflect the reduction of the book figures for assets to their estimated realisable value and the adjustments to the book figures for liabilities to the estimated total liabilities on liquidation.

24.4 Based upon the records available the estimated realisable value of assets and the estimated liabilities on liquidation of BCCI and Overseas have been assessed at US\$ 1,159m and US\$ 10,641m respectively. This position is summarised below:



	Total Assets US\$m	Total Liabilities US\$m
Book figures as at 30 June 1991 of BCCI/Overseas	11,730	11,503
Adjustments to assets and liabilities	<u>(10,571)</u>	<u>(862)</u>
Estimated outcome	<u>1,159</u>	<u>10,641</u>

- 24.5** This estimated position should not be treated as giving any firm indication of an estimated return to creditors. It represents a base position which will change dependent upon the outcome of the discussions between Mr Smouha and the Majority Shareholders referred to below, and whether the contemplated pooling arrangements can be implemented. Due to the confidential nature of these discussions, certain information has necessarily had to be omitted in arriving at the above figures. If the discussions cannot be brought to a successful conclusion the eventual return to creditors may be significantly lower than that indicated by the above figures.

(a) Assets

24.6 The reduction in the book figures of assets to estimated realisable value is as follows:

	US\$ m
Book value of BCCI and Overseas assets at 30 June 1991	11,730 =====
ADJUSTMENTS	
Set off	(1,908)
Loan provisions	(6,328)
Write down of accrued interest	(372)
Liquidation expenses	(239)
Overheads and expenses to December 1991	(200)
Preferential creditors	(200)
Write down of balances with US banking institutions	(190)
Funds blocked by banking institutions	(143)
Write down of fixed assets	(51)
Due from insolvent banking institutions	(233)
Write down of investments in securities	(180)
Branches which may ringfence	<u>(527)</u>
	(10,571) =====
Estimated realisable value of assets	1,159 =====

- 24.7** The reduction in assets from set-off of US\$ 1,908m is matched by a corresponding decrease in the estimated liabilities. The ability to claim set-off has arisen from two principal types of situation: First where claimants have access to BCCI and Overseas assets which they are holding in respect of their claims; Secondly, approximately US\$ 1,000m of assets held by brokers under repurchase agreements are subject to claims of set-off. Whilst all these rights to claim set-off will be subject to full legal challenge where appropriate, the adjustment takes account of the difficulties anticipated in the various jurisdictions involved.
- 24.8** The loan provision of US\$ 6,328m is based on the identification of non-performing loans. Many of these were known to BCCI management prior to 5 July 1991.
- 24.9** The write down of accrued interest of US\$ 372m relates primarily to the accrued interest on non performing loans.
- 24.10** Liquidation expenses of US\$ 239m represent an estimate of the costs of realisation of assets. Overheads prior to December 1991 of US\$ 200m represent the ongoing costs of maintaining the branches of BCCI and Overseas and other costs incurred.

- 24.11** An amount of US\$ 200m for preferential creditors has been included in arriving at the estimated realisable value of assets. Whether creditors have preferential claims may depend upon the local applicable laws of individual jurisdictions in which the operations of BCCI and Overseas were conducted.
- 24.12** Other break-up adjustments to the various categories of the book figures of assets have been made to arrive at the estimated realisable value of assets as shown in the table at paragraph 24.5. Among these adjustments is an amount of US\$ 527m which has been provided against the book figures of assets in respect of the branches of BCCI and Overseas which are likely to be sold or which may be ringfenced. The provision is stated net of estimated sale proceeds. An area of considerable uncertainty concerns assets in the USA by reason of the matters referred to in paragraph 20 above.

(b) Liabilities

- 24.13 The adjustments to the book figures of liabilities are as follows:**

	<u>US\$m</u>
Book figures for BCCI and Overseas liabilities at 30 June 1991	11,503
	==
ADJUSTMENTS	
Set off	(1,908)
Amounts payable to BCCI subsidiaries and affiliates	942
Unrecorded deposits	600
Contingent liabilities	1,126
Branches which may ringfence	(1,400)
Write off of CFC liabilities	(22)
Preferential Creditors	<u>(200)</u>
	(862)
	==
Estimated liabilities on liquidation	10,641
	==

- 24.14 The adjustments to book figures in respect of claims to set-off balances is referred to in paragraph 24.6 above.**

- 24.15 The detailed financial position of subsidiaries and affiliates of BCCI and Overseas is not taken into account in the above analysis. The impact of such subsidiaries and affiliates on the assets and liabilities of BCCI and Overseas is that amounts due from BCCI and Overseas to subsidiaries and affiliates of**

US\$ 942m have been included in liabilities ranking *pari passu* with other BCCI and Overseas creditors.

- 24.16 Unrecorded deposits of US\$ 600m are the estimated level of deposits placed with BCCI and Overseas which may not be included in the book figures for liabilities at 30 June 1991. Until claims are received the level of these unrecorded deposits will remain uncertain.
- 24.17 Contingent liabilities arising in respect of BCCI and Overseas are particularly difficult to estimate. This reflects problems arising from the nature of the international financial and banking transactions undertaken by the BCCI Group.

(c) Ringfencing

- 24.18 The application of "ringfencing" is dependent upon the local insolvency laws and the attitude of the local authority (liquidator, administrator or central bank) in countries where branches of BCCI and Overseas operated. Ringfencing involves the local authority utilising realisations of the assets of branches first to satisfy local creditors. Ringfencing may also occur by reason of local exchange control laws which prevents realised assets from being transferred out of the jurisdiction. Only when local creditors are satisfied in full might excess funds be made available to foreign creditors. The estimated financial position described above identifies the

impact that ringfencing or the sales of branches, which has a similar effect, may have on the estimated return to creditors.

- 24.19 The liquidation of BCCI and Overseas will be affected by the number of countries that ringfence by reducing the number of potential creditors while at the same time reducing the funds available for distribution. In addition, claims may be made by the liquidators or other authority in ringfencing jurisdictions in respect of the ownership of certain assets held in other countries. This activity is likely to lead to long and costly litigation between the different parts of the BCCI Group.
- 24.20 Some branches have been sold or are expected to be sold, the effect of which may result in distributions to creditors of that branch being proportionately in excess of those to the creditors of BCCI and Overseas worldwide. The decision by Touche Ross Officeholders to consider such sales has been based on the recognition that for either practical or legal reasons the assets of the branch are unlikely to be made available for distribution to creditors worldwide.
- 24.21 The estimated assets and liabilities of branches where ringfencing is likely to occur are US\$ 576m and US\$ 1,400m respectively and these have been deducted from the financial position.

(d) Summary Receipts and Payments Account

24.22 Receipts and payments in respect of the United Kingdom for the period 5 July 1991 to 19 November 1991 were £230.3m and £34.7m respectively. Receipts and payments in respect of BCCI in the United Kingdom, Isle of Man and Luxembourg and in respect of Overseas in the Cayman Islands for the same period totalled £242m and US\$ 59.lm, and £35.lm and US\$ 25m, respectively. A summary receipts and payments account appears at Appendix 4.



D. FUTURE STEPS

25 Status of Discussions

- 25.1** On 22 November 1991, a press release was issued by Mr. Smouha, the Commissaire of BCCI and one of the Commissaires of BCCI Holdings, the Provisional Liquidators and the Provisional Liquidators of Overseas. This press release included the following:

"At the hearing on 29th July 1991, the High Court adjourned the petition for a four month period. The purpose of the adjournments and of similar petitions elsewhere in the world, was to enable the possibility of a restructuring of part or all of BCCI to be explored. Mr. Smouha (on behalf of the various Provisional Liquidators and other Court appointed officers of Overseas and BCCI SA) was already in discussions with the Majority Shareholders of Holdings in Abu Dhabi, with a view to settling any claims outstanding against one another, alleviating the losses suffered by creditors, and maximising returns for them. During the past four months, intensive discussions to this end have continued. These discussions are almost complete. It is therefore the intention of the Provisional Liquidators of BCCI SA, supported by Mr. Smouha and the Majority Shareholders

of Holdings, to seek a further short adjournment of the petition on 2nd December.

In the course of the discussions, it has become clear that assets of the BCCI Group may be claimed by local liquidators. In addition, some branches are already bringing claims to funds outside their own jurisdictions. Furthermore, the affairs of Overseas and BCCI SA are inextricably intermingled. In the absence of some overall plan for the liquidation, these factors are likely to lead to long drawn out multi - jurisdictional litigation between the different parts of the BCCI Group, to the detriment of creditors generally. Such litigation might well last for more than ten years and, during that period, it is unlikely that significant distributions could be made to the creditors.

Accordingly, Mr Smouha has been working with representatives of the Majority Shareholders in Abu Dhabi to see whether an overall plan can be agreed and recommended to creditors, which would facilitate an earlier distribution to creditors and, by virtue of the participation of the Majority Shareholders, enhance the overall return to creditors.

The plan under discussion would involve a pooling arrangement, whereby the property and assets of BCCI SA and Overseas would be placed in one common pool

for pari passu distribution to all creditors of those companies. This would avoid or reduce significantly the competing claims to assets and other litigation referred to above. BCCI SA and Overseas and any other companies which participate in the plan would waive any claims they may have against the Majority Shareholders arising out of the BCCI affair and the Majority Shareholders would similarly waive claims (other than their claims as creditors) against those companies. The Majority Shareholders would then make a cash payment available for distribution amongst those creditors of the companies and branches which participate in the common pool, who waive any legal claims they may have against the Majority Shareholders. The Majority Shareholders would also assume responsibility for dealing with certain liabilities of Overseas and BCCI SA.

The size and complexity of the affairs of the BCCI Group, including the substantial number of jurisdictions involved, and the uncertainties inherent in such figures as are available, mean that the Provisional Liquidators are unable to give a realistic estimate of the likely return for creditors in the absence of a settlement plan of the kind described above. However, preliminary calculations indicate that the return to creditors without a plan of this kind may well be less than 10 cents in the \$ and this return would not be achieved for a number of years.



The discussions between the Majority Shareholders and Mr. Smouha regarding the plan referred to above must, at this stage, necessarily be confidential. The arrangement under discussion is highly complex. Its details will depend on the ultimate liabilities of the companies, as well as the recoveries in the liquidation. Neither the liabilities to be admitted nor the value of ultimate recoveries will be known for many years. However, if the arrangements under discussion with the Majority Shareholders can be consummated, the return to creditors will be materially enhanced and accelerated and the present estimate is that the eventual return to creditors could be within the range of 30 - 40 cents in the \$. This would be achieved by a combination of a cash payment and an assumption of liabilities by the Majority Shareholders.

The estimates of return to creditors exclude any assessment of recoveries from third parties by way of damages.

Discussions, although far advanced, are not finalised, but all parties are hopeful that a final agreement can be signed before the end of the year. Any arrangement would be subject to satisfaction of relevant conditions, including the approval of the Courts in Luxembourg, the Cayman Islands and England. Creditor support for the arrangements will also be required.

At the hearing on 2nd December, the Provisional Liquidators will be seeking a further adjournment of the petition for the liquidation of BCCI SA until the middle of January. The additional time will enable Mr. Smouha and the provisional liquidators in England and the Cayman Islands to finalise the liquidation plan, the pooling and other arrangements required. The Majority Shareholders will support the application for adjournment.

This paper has been seen and approved by representatives of the Majority Shareholders."

A copy of the full press release appears at Appendix 5.

- 25.2** The Provisional Liquidators cannot give detailed information as to the arrangements which are proposed by reason of the confidential nature of the discussions which are taking place with the Majority Shareholders. The Provisional Liquidators are however able to give the following summary of the steps which are likely to be taken if such arrangements are finalised.

26 Proposed future steps**The proposed arrangements with the Majority Shareholders**

- 26.1 The proposed arrangements with the Majority Shareholders if and when finalised will not become effective until Court approval, including the approval of the High Court in London, is obtained. It is proposed that worldwide publicity will be given to the date of the hearing in London at which Court approval will be sought. Creditors will thus have an opportunity to present their views on the proposed arrangements to the High Court.

27 Pooling

- 27.1 One of the conditions of the proposed Agreement with the Majority Shareholders is that a pooling arrangement be entered into in order to maximise the number of creditors who gain from the injection of funds, to facilitate an early distribution to creditors and avoid litigation between BCCI and Overseas and their branches.
- 27.2 The Touche Ross Officeholders currently consider that irrespective of any condition imposed as part of any



settlement with the Majority Shareholders, the only practicable manner in which the liquidation of BCCI and Overseas can be carried out efficiently and expeditiously, to the benefit of all creditors of both companies, is by a pooling arrangement between those companies.

27.3 In their Report to the Court dated 19 July 1991, the Provisional Liquidators stated:

".... the affairs of the BCCI Group are highly complicated and, even where they will, in due course, prove capable of being unravelled, the task will inevitably take some very considerable time. Matters are complicated by the fact that, in a number of respects, the BCCI Group appears to have conducted its affairs as a single entity without clearly identifying which company or entity within the BCCI Group was particularly concerned with, or responsible for, any particular transaction."

(See Paragraphs 8 and 9 of the Report)

27.4 Further investigations since the date of that Report have confirmed that the affairs of BCCI and Overseas in particular were so commingled that it would be impracticable without very considerable delay and enormous expense, and might well be impossible, either:

- (a) to determine, as between BCCI and Overseas, what asset or liability is the asset or liability of the one rather than the other; or

- (b) to determine what amounts, if any, are due from the one to the other as a result of acts and omissions in relation to transactions which have taken place (or should have taken place) between them.

Particulars of the grounds upon which the foregoing is based will be contained in a further Report which will be made available to the High Court at the same time as further information concerning the proposed arrangements (if finalised) with the Majority Shareholders is given.

- 27.5 Any pooling arrangement would be likely to involve realisations of the property and assets of BCCI and Overseas being placed in one common pool which would be distributed in such a manner as would result in creditors of both companies receiving the same percentage dividend. Particulars of the proposed pooling arrangement will be made available to the Court prior to the hearings at which Court approval will be sought.
- 27.6 It is currently envisaged that the principal features of the pooling arrangement will include the following. A pooling agreement would be entered into by BCCI and Overseas and their respective liquidators (appointed by the Luxembourg and English Courts in the case of BCCI and by the Grand Cayman Court in the case of Overseas). Such an agreement would not become effective until the requisite orders and

directions had been obtained from the Grand Cayman and English Courts and the Luxembourg Court (unless already approved as part of the Liquidation Plan).

- 27.7 The liquidators of BCCI and Overseas would co-operate with each other in maximising the realisations of property and assets of those companies and place those realisations into one common pool.
- 27.8 Amounts would be made available from time to time from the common pool to the Luxembourg and Cayman liquidators to be distributed *pari passu* amongst creditors in accordance with the laws of Luxembourg and Cayman Islands respectively.
- 27.9 The amounts to be made available to the Luxembourg and Cayman liquidators for distribution to creditors from the common pool would be determined with a view to the dividend to creditors of BCCI and Overseas being the same.
- 27.10 The laws applicable to the liquidation of BCCI in Luxembourg will be determined by a Liquidation Plan which has to be decided upon by the Luxembourg Court. The Commissaire of BCCI will use his best endeavours to ensure that the Liquidation Plan in Luxembourg will harmonise so far as is possible with the laws in the Cayman Islands which will govern the liquidation of Overseas. There are similarities

between the insolvency laws of the United Kingdom and of the Cayman Islands.

- 27.11 BCCI and Overseas would give mutual releases to each other to remove cross claims which would otherwise arise between them.
- 27.12 Under the proposed pooling arrangements foreign branches and subsidiaries and affiliates of BCCI and Overseas would be allowed to accede to and participate in the pooling arrangements provided that, in the case of subsidiaries and affiliates, this would be in the interests of creditors of BCCI and Overseas who prove in the Luxembourg and Cayman liquidations respectively.

England

- 27.13 After a winding up order has been made against BCCI in England, the English liquidators would seek directions and orders from the English Court to ensure that the conduct of the liquidation of BCCI in England will be fair, effective and efficient in the context of the proposed arrangements for the liquidation of BCCI in Luxembourg, the pooling of BCCI's assets with those of Overseas and the arrangements (if finalised) with the Majority Shareholders. These directions and orders would in the first instance be sought from the English Court at the same hearing as that which it is

proposed would consider approving the agreement with the Majority Shareholders and pooling arrangements.

27.14 It is currently envisaged that the principal features of the future relationship between the English liquidation of BCCI and the liquidations of BCCI in Luxembourg and of Overseas in the Cayman Islands would include the following:

27.14.1 The Luxembourg, Cayman and English liquidators would co-operate with each other with a view to maximising the realisation of the property and assets of BCCI and Overseas. The English Liquidators would be responsible in particular for realising the property and assets of BCCI situated within the jurisdiction of the English court;

27.14.2 The English liquidators would be responsible for determining the claims of all creditors of BCCI whose claims are given preferential status under S. 175 of the 1986 Act ("English preferential claims").

27.15 The realisations from the assets of BCCI made by the English liquidators would be applied as follows:



- 27.15.1 In payment of the costs, charges and expenses incurred by and the remuneration of, the English liquidators;
- 27.15.2 In payment of English preferential claims, subject to appropriate adjustment in the event that the claimant has received or is entitled to receive payments in a liquidation of BCCI in another jurisdiction;
- 27.15.3 The balance would be transmitted to the Luxembourg liquidators to be dealt with by them in the Luxembourg liquidation (and in particular in accordance with the Luxembourg Plan and under the pooling arrangements).

28 Proposed timetable

The adjournment of the winding up petition

- 28.1 The Provisional Liquidators seek a short adjournment of the petition until a date in early January 1991 for two principal reasons:
 - 28.1.1 To enable discussions with the Majority Shareholders to continue with a view to

finalising the proposed arrangements described above if possible;

28.1.2 To enable the date of winding up orders to be made in respect of BCCI and Overseas to be synchronised so far as is possible in the United Kingdom, Luxembourg and the Cayman Islands.

28.2 The Provisional Liquidators appreciate that this short adjournment will involve a delay in the bringing into force of the Depositors Protection Scheme under the Banking Act 1987. Of those claimants who have been paid under the Majority Shareholders' Deposit Protection Scheme, three quarters (in number) have been paid amounts which substantially correspond to what they would have been entitled to under the statutory scheme had it been brought into effect. In all the circumstances, the Provisional Liquidators consider that the interests of creditors of BCCI worldwide would best be served by the short adjournment sought.

28.3 In order to avoid possible complications which might otherwise arise in the implementation of the proposed arrangements, if and when they become effective, by reason of differences in the dates of the orders to wind up BCCI and Overseas in various jurisdictions, the Provisional Liquidators

of BCCI in England, Mr. Smouha and the Provisional Liquidators of Overseas in the Cayman Islands would seek so far as is possible to synchronise the date on which such orders are to be made. In the light of the current state of proceedings in Luxembourg and the Cayman Islands, and the future steps which are envisaged may be taken by the Luxembourg Court (in particular the adoption of a Liquidation Plan), the earliest date on which it would be practicable to achieve such a synchronisation is early January 1992.

- 28.4** If the winding up petition is adjourned to early January 1992, the following represents a summary of the proposed timetable to give effect to the matters referred to above:

December 1991:	Finalisation of the agreement with the Majority Shareholders and the proposed pooling and other arrangements referred to above
Early January 1992:	The Liquidation Plan for BCCI will be submitted to the Luxembourg Court
Early January 1992:	Hearing of adjourned winding up petition at which a winding up order will be sought, to be

synchronised if possible with the winding up of BCCI and Overseas in at least Luxembourg and the Cayman Islands respectively.

March 1992:

Hearing of application in the English Court to approve the proposed arrangements and in particular:

- (a) the Settlement Agreement**
- (b) the pooling arrangements**
- (c) initial directions and orders regarding the future conduct of the liquidation of BCCI in England.**

Hearing of an application in the Grand Cayman Court shortly thereafter to approve the proposed arrangements.

29 Conclusions

- 29.1 During the course of the hearing of the petition on the morning of 30 July 1991, Counsel for the Commissaire of**

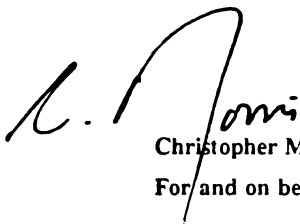
BCCI and for the Provisional Liquidators informed the High Court that their ultimate goal was,

"... to determine, under the auspices of the District Court of Luxembourg and in conjunction with, and with the co-operation of, the Courts in various jurisdictions, including the High Court in London, the most appropriate and orderly way in which the assets of the BCCI Group can be realised, and the maximum amount available for distribution ultimately distributed, on the basis of equality worldwide of the various entities of the BCCI Group"

(Transcript of hearing at page 22D)

29.2 This ultimate goal was endorsed by the High Court. The Provisional Liquidators believe that the most appropriate way to try to achieve this goal is to permit the discussions with the Majority Shareholders to continue, and to enable the arrangements described above to be finalised and thereafter submitted to the High Court for its approval.

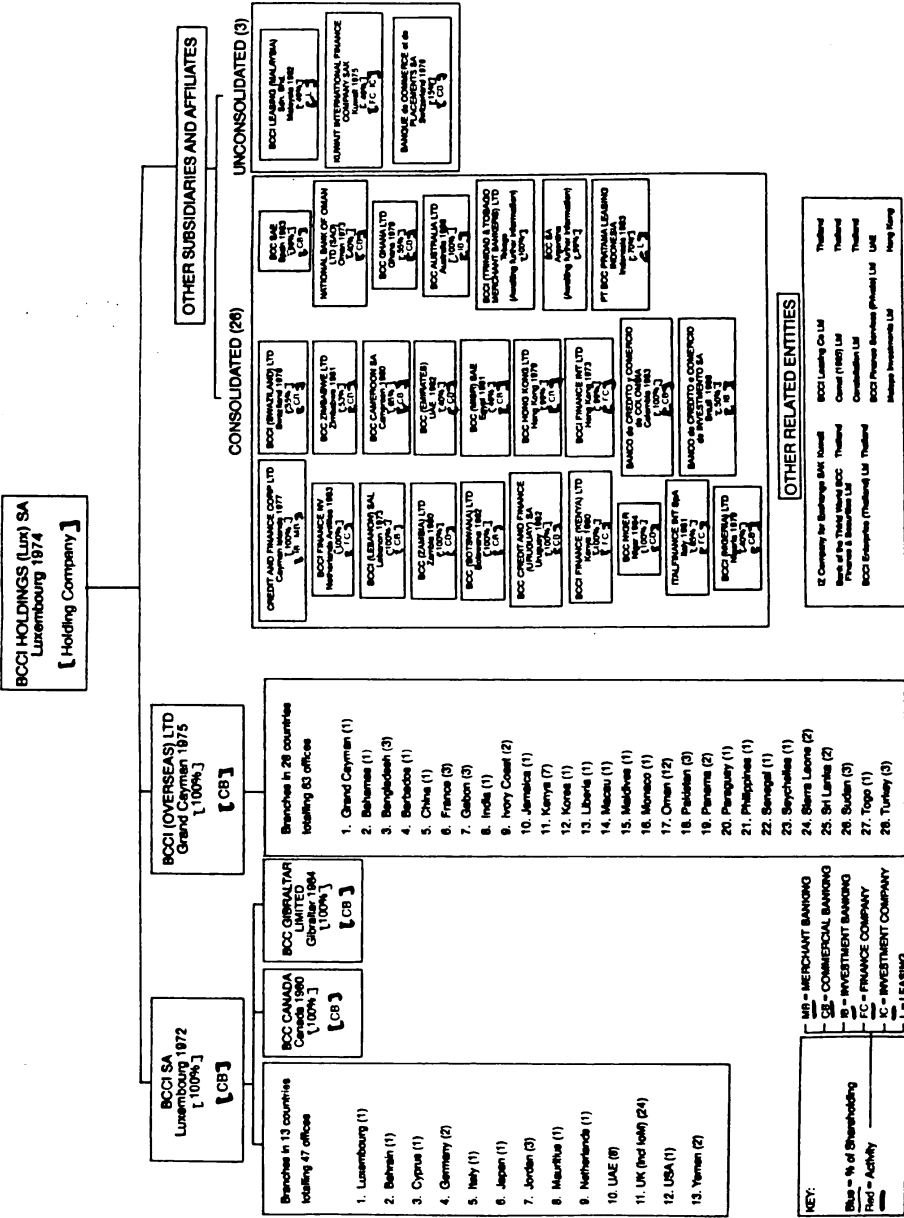
29.3 The Provisional Liquidators accordingly invite the Court to adjourn the petition until early January 1992.



Christopher Morris

For and on behalf of the Joint Provisional Liquidators

29 November 1991



APPENDIX 2

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
ARGENTINA	Sub/Holdings	Bank is closed. Licence cancelled on 26 July 1991. Proceeding with voluntary liquidation.
AUSTRALIA	Sub/Holdings	Provisional Liquidator appointed on 8 July 1991. (BDO Nelson Parkhill). Likely to go into liquidation shortly.
BAHRAIN	Branch/BCCI	Closed since 7 July 1991. On 8 July 1991 the Monetary Agency of the State of Bahrain issued an order requiring BCCI in Bahrain to freeze all assets and liabilities pending an investigation by, and further notice from, such Agency. Central Bank was appointed as administrator initially - replaced by Deloitte Touche Ross ("DTR"). Central Bank has forbidden DTR contact with TR. Currently trying to arrange a meeting with local authority/ appointed administrator.
BANGLADESH	Branch/Overseas	Closed since 6 July 1991. Central Bank has suspended operations and withdrawn authorised dealership licence. TR visited Bangladesh. Other alternative is effectively a scheme of arrangement. TR visited Bangladesh again and have assisted Central Bank in both devising a marketing plan and a plan for a scheme of arrangement and maintained close co-operation. Central Bank now sent plans to Government, response awaited.
BARBADOS	Branch/Overseas	Closed since 8 July 1991. Central Bank took over on 18 July 1991 and Court appointed two custodians (one of which is DTR) who were authorised to wind up and liquidate. One serious purchaser exists who is negotiating direct with the Central Bank. Retroactive ringfencing legislation enacted. Writ filed in Barbados against Overseas, but not yet served

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
		in Cayman. Writ is claiming US\$7.8m deposit placed in Cayman.
BOTSWANA	Sub/Holdings	Bank operated under direct control of Bank of Botswana effective from 7 July 1991. Sale of bank completed. Proceeds (\$9.5m) held in escrow. Remittable to Luxembourg upon finalisation.
BRAZIL	50% Sub/Holdings	Open for business. Attempting to sell our 50% shareholding to 30% shareholder. Put option exercised by two other minority shareholders.
BAHAMAS	Branch/Overseas	In voluntary liquidation since early 1991. DTR taken over as liquidators. Statement of affairs in process of being produced.
CAMEROON	65% Sub/Holdings	Bank operating under the supervision of Government of Cameroon since 11 July 1991. Negotiations and meetings have taken place with the Government. Central Bank has prepared statements of affairs showing deficit. Government made offer for our share of \$1 and will remove the deficit. Offer under consideration.
CANADA	Sub/BCCI	Closed since 5 July 1991. Central Bank appointed Arthur Andersen as curator who have taken over the management. Order issued for permanent liquidation 23 September 1991..
CHINA	Branch/Overseas	Closed since 6 July 1991. Central Bank has sent inspectors to examine assets and liabilities position.
COLOMBIA	Sub/Holdings	Bank was operated under special surveillance by Superintendency. Sale agreement which had been signed by purchaser had to be renegotiated. Bank name changed along with board of directors by purchaser prior to

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
		completion of sale. Sale completed for \$1m on 27 September 1991.
COTE D'IVOIRE	Branch/Overseas	Closed since 6 July 1991. Branch under joint control with Central Bank. TR visited West Africa to explore sale possibilities. Negotiations are taking place to sell branch, including Senegal, Togo and Niger.
CYPRUS	Branch/BCCI	On 8 July 1991, the Central Bank of Cyprus imposed a condition upon the licence of BCCI in Cyprus requiring the branch to abide by the closure instructions from the IML. Limassol court appointed DRT as Provisional Liquidator on 22 August 1991.
EGYPT	49% Sub/Holdings	Placed under order from Central Bank on 11 July 1991. All assets and liabilities frozen. Local operations remain open for restricted operations. Central Bank removed the board of directors on 5 August 1991 and appointed an administrator. Application to Court being made by TR for access.
FRANCE	Branch/Overseas	Not allowed to carry on with Transactions. Provisional administrators appointed on 4 July 1991 and 23 July 1991. Operations remain suspended from 5 July 1991. Hearing before the Banking Commission to cancel licence adjourned indefinitely.
GABON	Branch/Overseas	Closed since 6 July 1991. Put into judicial administration on 5 August 1991 by Ministry of Finance for eventual liquidation. Scheme for repayment of small depositors proposed by provisional administrator for end October 1991. Number of interested parties but no offers as yet. Meeting held with French representatives of provisional administrator in Paris on 15 October 1991.
GERMANY	Branch/BCCI	On 7 July 1991, the German Credit Control

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
		Authority issued an order imposing a moratorium on the operations of BCCI's Frankfurt and Hamburg branches beginning 8 July 1991. Open since 8 July 1991 for restricted operation under directions of Central Bank. An administrator was appointed to overview the operations. On 8 October, the Magistrate's Court of Frankfurt declared the two German branches of BCCI in Frankfurt and Hamburg bankrupt. Liquidator was appointed on 9 October 1991.
GHANA	75 % Sub/Holdings	Bank was closed but later reopened. Restricted withdrawals allowed. Bank placed under Central Bank supervision. Bank of Ghana wish to see the bank continue through a fresh injection of capital and restructuring possibly to include public subscription.
GIBRALTAR	Sub/BCCI	Provisional Liquidators KPMG BCCI appointed on 5 July 1991. Operations suspended. Adjourned hearing on 5 December 1991.
HONG KONG	Sub/Holdings	Commissioner suspended operations on 8 July 1991. Decision taken on 17 July 1991 to apply for liquidation. KPMG Peat Marwick appointed as Provisional Liquidator.
INDIA	Branch/Overseas	Closed since 6 July 1991. Central Bank appointed State Bank of India as Provisional Liquidators on 15 July. TR visiting Bombay on ongoing basis to negotiate with Central Bank. Litigation still ongoing to have JPL's rights admitted in court.
INDONESIA	70 % Sub/Holdings	Supervised by Minister of Finance and suspended since March 1991. TR visited 5 October 1991. Likely to be put into liquidation shortly.

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
ITALY	Branch/BCCI	Branch closed since 31 March 1991. Assets currently being liquidated by DRT, Rome. Sale enquiry received for licence, property, etc. Funds currently frozen by injunction by former employees.
JAMAICA	Branch/Overseas	Was open for a few days for payment up to J\$50,000. Now closed and taken over by the receiver on 11 July 1991. Visited by TR on 12, 13 and 17 September 1991. Winding up petition heard 23 September 1991. Adjourned until 11 November 1991, obtained further adjournment until 18 December 1991. Jamaican government has passed amending legislation to ringfence Jamaican creditors. PLs attempting to negotiate further adjournment to permit sale on a co-operative basis with Bank of Jamaica.
JAPAN	Branch/BCCI	Closed since 8 July 1991. Court has appointed a Provisional Liquidator, in regular contact.
JORDAN	Branch/BCCI	On 8 July 1991, the Central Bank of Jordan ("CBJ") instructed BCCI in Jordan that (1) the bank's branches in Jordan should be closed; (2) deposit withdrawals were to be permitted up to D100 (£900) plus 25 per cent of the balance of such deposits plus interest; (3) CBJ was to supervise operations of BCCI in Jordan; and (4) after re-opening, the bank could continue to trade on a limited basis with no new credit facilities permitted to be opened. Central Bank appointed liquidator on 10 September 1991 giving them authority to dispose of branch.
KENYA FINANCE	Sub/Holdings	Branch and sub sold together for \$9m subject to result of due diligence work by purchaser which reduced proceeds to \$5.5m.
KENYA	Branch/Overseas	
KOREA	Branch/Overseas	Branch voluntarily suspended business on 8 July 1991. Bank of Korea imposed directions freezing assets. TR visited. In full voluntary

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
		liquidation since 28 August. TR Liquidators.
KUWAIT	49% Sub/Holdings	Closed since Iraqi invasion 2 August 1990. TR visited to discuss options available with other shareholders and attend EGM. Statement of affairs being prepared. TR negotiating access to underlying records.
LEBANON	Sub/Holdings	Supervisory action taken. Bank is closed as staff have been on strike since 8 July 1991. Central Bank appears to wish to keep bank going. Depositors filed for liquidation on 2 October 1991. Provisional manager appointed 21 October 1991. Liquidation case adjourned to 13 November 1991 and further adjourned until 4 December to allow time for sale negotiations to take place.
LIBERIA	Branch/Overseas	Operations remain suspended since June 1990 due to civil war. Certain records transferred to Sierra Leone. Liquidation order made on 5 November 1991.
MACAU	Branch/Overseas	Open from 8 to 12 July 1991. Closed and taken over by Central Bank. Administrative Commissioner appointed on 12 July 1991. TR have visited.
MALDIVES	Branch/Overseas	Closed 6 July 1991, reopened on 18 July 1991 for restricted operations under the directives of Maldives Monetary Authority (MMA). Independent auditors instructed. TR asked for further analysis of certain accounts. MMA are discussing possible sale with interested parties' meeting to be heard 10 December; TR are involved in the negotiations.
MAURITIUS	Branch/BCCI	On 6 July 1991, the Central Bank of Mauritius ("CBM") placed the assets of BCCI under protective control. The CBM later appointed a

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
		TR affiliate as administrator. Sale completed. Sold for \$1 to Kenya buyer.
MONACO	Branch/Overseas	Closed since 8 July 1991.
NETHERLANDS	Branch/BCCI SA	On 8 July 1991, the District Court of Amsterdam appointed two administrators to investigate and oversee the affairs of the BCCI branch at the Herengracht. Staff dismissed - premises up for sale.
NIGER	40% Sub/Holdings	Bank closed since 8 July 1991. See comments re: Cote D'Ivoire.
NIGERIA	40% Sub/Hodings	Bank open for business under control of Central Bank. Name changed to African International Bank. Local shareholders in touch with Touche Ross for sale possibility and have made offer for our 40%.
OMAN	Branch/Overseas	Closed since 6 July 1991. Arthur Andersen appointed as administrators. TR have access but no control over sale. Central Bank was negotiating sale of branches to Oman Banking Corporation - now suspended as other local banks wish to have opportunity to bid. Several other offers now received by Central Bank.
PAKISTAN	Branch/Overseas	Open for restricted operations since 6 July 1991 under the directives of Central Bank. Several meetings with Central Bank (SBP). Scheme under S.47 likely and sale to nationalised or 'substantial' foreign bank. SBP have approached Habib Bank to take over. Due diligence performed by Robson Rhodes 22 October. Lengthy negotiations by TR with Habib now under consideration by TR and Cayman. SBP asking for TR to return to finalise as soon as possible.

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
PANAMA	Branch/Overseas	Taken over by Central Bank on 8 July 1991. Local liquidator appointed. DRT visited and established lines of communication and a working relationship with liquidator. Local liquidation plan required to be placed before Court for approval before 30 November 1991.
PARAGUAY	Branch/Overseas	Closed since 8 July 1991. Central Bank inspected the branch. Country manager was under house arrest for 3 days. Reopened for restricted operations. Deal to sell in place prior to 5 July 1991 but expired. Further offer being considered. Depositors have commenced liquidation proceedings.
PHILIPPINES	Branch/Overseas	Closed since 8 July 1991. Central Bank directed branch to put assets into escrow with it to cover local liabilities. DRT visited. Running of branch handed to DRT by Central Bank. No formal appointment as Provisional Liquidator. Mandate from Cayman Court.
SENEGAL	Branch/Overseas	Closed since 8 July 1991. See comments re: Cote D'Ivoire.
SEYCHELLES	Branch/Overseas	Closed. Provisional Liquidators had meetings with Central Bank. Seychelles International Bank, a newly government-sponsored bank, appeared keen to buy. TR visited. Central Bank have rejected one of two offers, have put bank into liquidation with DRT agent as liquidator. Have placed restrictions on remittability of funds if sale to other party goes ahead or liquidation takes place. DRT agent currently assessing viability of sale/liquidation.
SIERRA LEONE	Branch/Overseas	Closed 8 July 1991. Central Bank intervened on 8 July 1991. Several groups indicated interest in acquiring the operation. DRT agent from Ivory Coast visited and prepared brief statement of affairs.

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
SPAIN	99% Sub/Holdings	BCCI Spain Board resolved on 7 July 1991 to suspend all payments from 8 July. Counsel of Ministers have since revoked the licence. Central Bank have taken over. Central Bank is willing to consider proposals for sale from finance institutions. Salomon Brothers appointed as sale agents. Sale document complete and five interested buyers. Package of support put together by Bank of Spain and five buyers invited to rebid on this basis, closing date 22 November 1991.
SRI LANKA	Branch/Overseas	Closed. Taken over by Central Bank 8 July 1991 and Seylan Bank appointed as managers by them. Reopened for restricted operation on 29 July 1991. TR negotiating sale with Seylan and Central Bank. Sale proposal currently being circulated. Awaiting response from Central Bank of Sri Lanka suggesting slight amendments to proposed agreement for sale to Seylan Bank and requesting full access to records.
SUDAN	Branch/Overseas	Closed since 7 July 1991. Central Bank considering reopening the branch for payment of local currency deposits. DRT Nairobi visited and reported to Cayman. Cayman has written to Central Bank to discuss options. No reply received.
SWAZILAND	55% Sub/Holdings	Central Bank took over on 24 July 1991. Bank was open for business. TR had reached agreement with Central Bank and purchaser. Sale completed to Meridian Bank for £145K. Remitted to Luxembourg.
SWITZERLAND	15% Sub/Holdings	Bank open for business. "Observer" from Price Waterhouse put in with powers to stop transactions if considered necessary. No transactions permitted with rest of BCCI Group. Sale agreement signed, but Commissaires challenging certain clauses.

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
THAILAND	Sub/Holdings	Sale currently being negotiated in Thailand. One serious bidder has commenced due diligence, two other interested parties. Letter of intent received from additional interested party.
TOGO	Branch/Overseas	Closed since 8 July 1991. See comments re: Cote D'Ivoire.
TRINIDAD	Sub/Holdings	Bank is closed. Central Bank took over on 6 July 1991. Court appointed Deposit Insurance Corporation as liquidator 22 August 1991.
TURKEY	Branch/Overseas	All activities frozen 8 July 1991. Licence was cancelled and branches taken over by Central Bank. TR and DRT local office were in contact with Central Bank. Branches currently administered by a director appointed by the Undersecretariat of the Treasury. Visit undertaken by TR. Court order required for access.
URUGUAY	Sub/Holdings	Bank is closed. Was taken over by Central Bank on 8 July 1991 and liquidator appointed operating broadly to DRT instruction. Sale being negotiated.
YEMEN	Branch/BCCI SA	On 7 July 1991, the Central Bank of Yemen issued a decree appointing a manager for the two BCCI branches in Yemen and forming a committee to assess the assets of the Yemen branches. Central Bank has taken over and appointed a manager. TR on visits to Yemen have investigated financial position and have been to Yemen talking to potential buyers. Awaiting return of Governor of Central Bank when Central Bank will take decision as to whether they wish to proceed with a sale. Several buyers interested.

<u>COUNTRY</u>	<u>SUBSIDIARY/ BRANCH</u>	<u>STATUS</u>
ZAMBIA	Sub/Holdings	Operation remained open. Bank of Zambia expressed confidence in financial position. Suspended from participating in foreign exchange dealings effective 6 July 1991. Sale finalised. Sold for \$2.2m proceeds remitted to Luxembourg.
ZIMBABWE	53% Sub/Holdings	Bank open for business. TR negotiating with Government in Zimbabwe. Principal problem is exchange control regulations which are being negotiated.

BCCI HOLDINGS CONSOLIDATED ACCOUNTS

BALANCE SHEET

	June 1991 US\$'000	December 1990 US\$'000	December 1989 US\$'000	December 1988 US\$'000	December 1987 US\$'000
ASSETS					
Cash and due from banks	3,867,801	5,064,885	8,787,927	5,959,765	5,425,282
Certificates of Deposit	511,314	653,899	1,657,210	1,594,558	1,983,805
Investments in securities and other dealing assets	1,460,641	1,418,686	1,931,905	2,241,708	2,054,389
Loans and advances (less provision for loan losses)	10,183,068	10,800,221	10,235,448	9,838,179	9,224,882
Accrued interest	153,052	247,591	359,546	383,265	351,820
Investment in affiliates	8,547	8,739	65,339	65,373	75,365
Property and equipment	217,306	243,712	245,666	254,606	239,393
Other assets	582,379	217,208	235,526	300,201	288,064
TOTAL ASSETS	16,984,108	18,654,941	23,518,567	20,637,655	19,643,000
LIABILITIES					
Demand deposits	2,386,678	2,728,850	3,595,507	3,137,322	2,990,813
Savings and time deposits	10,810,240	12,437,782	14,857,108	12,524,696	12,448,424
Due to banks	2,693,812	2,497,165	3,242,583	2,827,135	2,010,987
Floating rate notes	-	-	27,650	43,000	50,000
Accrued interest on deposits and other funds	77,805	239,394	339,177	283,726	224,278
TOTAL DEPOSITS AND OTHER FUNDS	15,968,535	17,903,191	22,062,025	18,815,879	17,724,502
Provision for taxes	65,699	71,698	68,733	65,596	46,745
Other liabilities	694,091	369,648	313,214	339,047	402,571
TOTAL LIABILITIES	16,728,325	18,344,537	22,443,972	19,220,522	18,173,818
CAPITAL FUND					
Issued and paid up shares	844,750	844,750	744,750	726,000	660,000
Proposed stock dividend	-	-	-	-	66,000
Legal reserves	52,509	53,257	51,954	50,220	48,316
Retained earnings and other reserves	(1,248,857)	(1,183,980)	(372,585)	109,665	206,701
SHAREHOLDERS' EQUITY	(351,598)	(285,973)	424,119	885,885	981,017
Subordinated capital notes	462,100	462,100	517,000	412,500	389,000
Minority interests	145,281	134,277	133,476	118,748	99,165
TOTAL CAPITAL FUND	255,783	310,404	1,074,595	1,417,133	1,469,182
CAPITAL FUND AND TOTAL LIABILITIES	16,984,108	18,654,941	23,518,567	20,637,655	19,643,000
CONTRA ACCOUNTS					
Acceptances	254,257	315,320	440,394	301,417	323,556
Letters of credit	1,636,386	2,063,356	2,094,371	2,350,381	2,122,327
Letters of guarantee	1,995,041	2,256,864	2,322,637	2,237,446	2,107,926
	3,885,684	4,635,540	4,857,402	4,889,244	4,553,809

BCCI HOLDINGS CONSOLIDATED ACCOUNTS

PROFIT AND LOSS

	June 1991 US\$'000	December 1990 US\$'000	December 1989 US\$'000	December 1988 US\$'000	December 1987 US\$'000
INCOME					
Interest income	745,160	2,025,325	2,206,854	1,892,174	1,581,185
Interest expense	(645,878)	(1,761,237)	(1,843,952)	(1,493,493)	(1,195,456)
Net interest income	99,282	264,088	362,902	398,681	385,729
Other operating income	144,251	238,663	436,160	377,100	293,130
TOTAL INCOME	243,533	502,751	799,062	775,781	678,859
OPERATING EXPENSES					
Salaries and related costs	116,170	278,870	267,944	259,801	230,536
Occupancy expenses	44,044	106,211	86,262	90,912	81,550
Depreciation on property and equipment	13,181	43,943	33,355	31,588	29,908
Other expenses	95,594	439,616	187,274	201,546	151,424
TOTAL EXPENSES	268,989	868,640	574,835	583,847	493,418
NET OPERATING PROFIT	(25,456)	(365,889)	224,227	191,934	185,441
Loan loss provision	(33,500)	(680,000)	(600,000)	(145,000)	(70,000)
PROFIT BEFORE TAXATION	(58,956)	(1,045,889)	(375,773)	46,934	115,441
Taxation for the year	(4,000)	(43,000)	(72,891)	(74,000)	(60,000)
PROFIT AFTER TAXATION	(62,956)	(1,088,889)	(448,664)	(27,066)	55,441
Extraordinary item	-	-	(30,622)	-	-
	(62,956)	(1,088,889)	(479,286)	(27,066)	55,441
Minority interests	(14,500)	(9,750)	(18,555)	(21,654)	(17,988)
PROFIT ATTRIBUTABLE TO SHAREHOLDERS	(77,456)	(1,098,639)	(497,841)	(48,720)	37,453
STATEMENT OF RETAINED EARNINGS AND OTHER RESERVES					
At beginning of the year	(1,183,980)	(372,585)	109,665	206,701	336,212
Adjustments to provisions brought forward	-	-	-	-	(100,000)
Profit for the year	(77,456)	(1,098,639)	(497,841)	(48,720)	37,453
	(1,261,436)	(1,471,224)	(388,176)	157,981	273,665
Premium on issue of shares	-	300,000	56,250	-	-
Other reserve movements	12,579	(10,309)	(30,590)	(36,249)	12,371
APPROPRIATIONS					
Proposed stock dividends	-	-	-	-	(66,000)
Transfer to legal reserves	-	(2,447)	(2,874)	(3,411)	(4,766)
Other appropriations	-	-	(7,195)	(8,656)	(8,569)
CARRIED FORWARD AT END OF THE YEAR	(1,248,857)	(1,183,980)	(372,585)	109,665	206,701

BCCI SA CONSOLIDATED ACCOUNTS

BALANCE SHEET

	June 1991 US\$'000	December 1990 US\$'000	December 1989 US\$'000	December 1988 US\$'000	December 1987 US\$'000
ASSETS					
Cash and due from banks	1,803,633	2,641,830	4,465,079	2,752,313	3,597,688
Certificates of Deposit	239,325	305,303	523,346	824,697	671,799
Investments in securities and other dealing assets	59,760	59,698	73,662	56,986	127,273
Loans and advances (less provision for loan losses)	3,812,505	4,157,205	3,843,818	3,460,177	3,152,303
Accrued interest	67,072	80,113	111,434	122,587	94,218
Investment in subsidiaries	58,007	36,482	35,680	35,352	26,154
Property and equipment	77,811	92,984	96,522	101,961	96,801
Other assets	165,784	32,298	41,179	49,294	64,584
TOTAL ASSETS	6,283,897	7,405,913	9,190,720	7,403,367	7,830,820
LIABILITIES					
Demand deposits	879,234	911,170	1,060,135	677,934	636,169
Savings and time deposits	4,630,773	5,753,111	6,457,901	4,891,744	5,306,636
Due to banks	485,702	500,069	955,507	1,173,094	1,230,701
Floating rate notes	-	-	-	-	-
Accrued interest on deposits and other funds	65,503	94,108	120,089	94,213	81,073
TOTAL DEPOSITS AND OTHER FUNDS	6,061,212	7,258,458	8,593,632	6,836,985	7,254,579
Provision for taxes	21,854	25,574	15,789	9,879	9,085
Other liabilities	188,627	83,935	46,129	42,046	62,727
TOTAL LIABILITIES	6,271,693	7,367,967	8,655,550	6,888,910	7,326,391
CAPITAL FUND					
Issued and paid up shares	307,500	307,500	307,500	295,000	295,000
Proposed stock dividend	-	-	-	-	-
Legal reserves	7,842	7,842	7,842	7,677	7,327
Retained earnings and other reserves	(488,138)	(462,396)	34,828	51,780	42,102
SHAREHOLDERS' EQUITY	(172,796)	(147,054)	350,170	354,457	344,429
Subordinated loan capital	185,000	185,000	185,000	160,000	160,000
Minority interests	-	-	-	-	-
TOTAL CAPITAL FUND	12,204	37,946	535,170	514,457	504,429
CAPITAL FUND AND TOTAL LIABILITIES	6,283,897	7,405,913	9,190,720	7,403,367	7,830,820
CONTRA ACCOUNTS					
Acceptances	70,617	84,185	145,359	78,172	82,306
Letters of credit	378,219	565,196	502,750	620,087	551,521
Letters of guarantee	494,714	603,996	691,146	592,992	647,696
	943,550	1,253,377	1,339,255	1,291,251	1,281,523

BCCI SA CONSOLIDATED ACCOUNTS

PROFIT AND LOSS

	June 1991 US\$'000	December 1990 US\$'000	December 1989 US\$'000	December 1988 US\$'000	December 1987 US\$'000
INCOME					
Interest income	348,590	908,973	874,270	733,421	637,029
Interest expense	<u>(313,630)</u>	<u>(831,132)</u>	<u>(757,053)</u>	<u>(617,985)</u>	<u>(524,832)</u>
Net interest income	34,960	77,841	117,217	115,436	112,197
Other operating income	<u>38,670</u>	<u>64,691</u>	<u>107,344</u>	<u>87,724</u>	<u>58,939</u>
TOTAL INCOME	<u>73,630</u>	<u>142,532</u>	<u>224,561</u>	<u>203,160</u>	<u>171,136</u>
OPERATING EXPENSES					
Salaries and related costs	37,754	86,396	84,439	82,896	68,381
Occupancy expenses	14,757	37,846	26,955	25,340	24,199
Depreciation on property and equipment	4,947	15,175	14,001	12,995	12,825
Other expenses	<u>26,187</u>	<u>107,737</u>	<u>45,911</u>	<u>46,229</u>	<u>38,113</u>
TOTAL EXPENSES	<u>83,645</u>	<u>247,154</u>	<u>171,306</u>	<u>167,460</u>	<u>143,518</u>
NET OPERATING PROFIT	(10,015)	(104,622)	53,255	35,700	27,618
Loan loss provision	<u>(50,000)</u>	<u>(381,000)</u>	<u>(40,000)</u>	<u>(26,000)</u>	<u>(19,000)</u>
PROFIT BEFORE TAXATION	(60,015)	(485,622)	13,255	9,700	8,618
Taxation for the year	<u>(5,000)</u>	<u>(10,000)</u>	<u>(10,000)</u>	<u>(4,500)</u>	<u>(7,010)</u>
PROFIT AFTER TAXATION	<u>(65,015)</u>	<u>(495,622)</u>	<u>3,255</u>	<u>5,200</u>	<u>1,608</u>
STATEMENT OF RETAINED EARNINGS AND OTHER RESERVES					
At beginning of the year	(462,397)	34,828	51,780	42,102	21,477
Adjustments to provisions brought forward	-	-	(25,000)	-	(30,000)
Profit for the year	<u>(65,015)</u>	<u>(495,622)</u>	<u>3,255</u>	<u>5,200</u>	<u>1,608</u>
	(527,412)	(460,794)	30,035	47,302	(6,915)
Premium on issue of shares	-	-	12,500	-	40,000
Other reserve movements	39,274	(1,603)	(6,042)	6,528	10,803
APPROPRIATIONS					
Proposed stock dividends	-	-	-	-	-
Transfer to legal reserves	-	-	(165)	(350)	(200)
Other appropriations	<u>-</u>	<u>-</u>	<u>(1,500)</u>	<u>(1,700)</u>	<u>(1,586)</u>
CARRIED FORWARD					
AT END OF THE YEAR	<u>(488,138)</u>	<u>(462,397)</u>	<u>34,828</u>	<u>51,780</u>	<u>42,102</u>

BCCI OVERSEAS CONSOLIDATED ACCOUNTS

BALANCE SHEET

	June 1991 US\$'000	December 1990 US\$'000	December 1989 US\$'000	December 1988 US\$'000	December 1987 US\$'000
ASSETS					
Cash and due from banks	1,415,212	1,714,960	3,301,399	3,005,497	2,061,612
Certificates of Deposit	186,255	260,542	1,046,778	688,904	1,279,233
Investments in securities and other dealing assets	965,131	967,747	1,334,617	1,388,538	1,285,160
Loans and advances (less provision for loan losses)	4,021,322	4,035,435	3,006,676	3,111,778	3,038,195
Accrued interest	-	93,380	151,021	170,601	170,898
Investment in affiliates	-	-	-	-	-
Property and equipment	43,832	50,285	57,205	58,700	54,521
Other assets	<u>188,708</u>	<u>79,032</u>	<u>79,644</u>	<u>71,145</u>	<u>88,906</u>
TOTAL ASSETS	<u>6,820,460</u>	<u>7,201,381</u>	<u>8,977,340</u>	<u>8,495,163</u>	<u>7,978,525</u>
LIABILITIES					
Demand deposits	529,228	646,739	778,460	980,516	1,178,993
Savings and time deposits	2,160,914	2,345,669	3,386,547	3,449,311	3,341,159
Due to banks	3,923,035	3,942,093	4,119,375	3,304,194	2,704,750
Floating rate notes	-	-	-	-	-
Accrued interest on deposits and other funds	-	80,786	138,461	129,432	90,278
TOTAL DEPOSITS AND OTHER FUNDS	<u>6,613,177</u>	<u>7,015,287</u>	<u>8,422,843</u>	<u>7,863,453</u>	<u>7,315,180</u>
Provision for taxes	39,497	31,767	22,314	25,432	17,707
Other liabilities	<u>247,284</u>	<u>152,704</u>	<u>107,561</u>	<u>120,039</u>	<u>113,723</u>
TOTAL LIABILITIES	<u>6,899,958</u>	<u>7,199,758</u>	<u>8,552,718</u>	<u>8,008,924</u>	<u>7,446,610</u>
CAPITAL FUND					
Issued and paid up shares	450,000	450,000	450,000	425,000	390,000
Proposed stock dividend	-	-	-	-	-
Legal reserves	-	-	-	-	-
Retained earnings and other reserves	<u>(654,498)</u>	<u>(573,377)</u>	<u>(150,378)</u>	<u>(38,761)</u>	<u>1,915</u>
SHAREHOLDERS' EQUITY	<u>(204,498)</u>	<u>(123,377)</u>	<u>299,622</u>	<u>386,239</u>	<u>391,915</u>
Subordinated loan capital	125,000	125,000	125,000	125,000	140,000
Minority interests	-	-	-	-	-
TOTAL CAPITAL FUND	<u>(79,498)</u>	<u>1,623</u>	<u>424,622</u>	<u>511,239</u>	<u>531,915</u>
CAPITAL FUND AND TOTAL LIABILITIES	<u>6,820,460</u>	<u>7,201,381</u>	<u>8,977,340</u>	<u>8,520,163</u>	<u>7,978,525</u>
CONTRA ACCOUNTS					
Acceptances	86,728	101,928	146,481	133,584	170,841
Letters of credit	318,960	404,582	588,613	756,574	822,942
Letters of guarantee	<u>904,410</u>	<u>997,084</u>	<u>985,410</u>	<u>1,040,537</u>	<u>880,772</u>
	<u>1,310,098</u>	<u>1,503,594</u>	<u>1,720,504</u>	<u>1,930,695</u>	<u>1,874,555</u>

BCCI OVERSEAS CONSOLIDATED ACCOUNTS

PROFIT AND LOSS

	June 1991 US\$'000	December 1990 US\$'000	December 1989 US\$'000	December 1988 US\$'000	December 1987 US\$'000
INCOME					
Interest income	291,020	826,202	968,187	898,513	783,286
Interest expense	(308,348)	(838,917)	(921,457)	(816,753)	(679,365)
Net interest income	(17,328)	(12,715)	46,730	81,760	103,921
Other operating income	51,474	61,839	206,844	177,189	146,876
TOTAL INCOME	<u>34,146</u>	<u>49,124</u>	<u>253,574</u>	<u>258,949</u>	<u>250,797</u>
OPERATING EXPENSES					
Salaries and related costs	30,871	90,933	76,129	87,789	82,275
Occupancy expenses	12,937	35,347	23,505	35,672	31,465
Depreciation on property and equipment	3,081	16,028	8,157	7,307	6,460
Other expenses	42,396	190,548	68,496	78,495	61,732
TOTAL EXPENSES	<u>89,285</u>	<u>332,856</u>	<u>176,287</u>	<u>209,263</u>	<u>181,932</u>
NET OPERATING PROFIT	(55,139)	(283,732)	77,287	49,686	68,865
Loan loss provision	-	(110,000)	(125,000)	(55,000)	(25,000)
PROFIT BEFORE TAXATION	(55,139)	(393,732)	(47,713)	(5,314)	43,865
Taxation for the year	-	(22,000)	(40,000)	(39,400)	(32,800)
PROFIT AFTER TAXATION	(55,139)	(415,732)	(87,713)	(44,714)	11,065
Extraordinary item	-	-	(30,622)	(14,200)	-
	<u>(55,139)</u>	<u>(415,732)</u>	<u>(118,335)</u>	<u>(58,914)</u>	<u>11,065</u>

STATEMENT OF RETAINED EARNINGS AND OTHER RESERVES

At beginning of the year	(573,377)	(150,378)	(38,761)	1,915	41,068
Adjustments to provisions brought forward	-	-	-	-	-
Profit for the year	(55,139)	(415,732)	(118,335)	(58,914)	11,065
	(628,516)	(566,110)	(157,096)	(56,999)	52,133
Premium on issue of shares	-	-	25,000	35,000	-
Other reserve movements	(25,982)	(7,267)	(13,082)	(10,262)	(8,018)
APPROPRIATIONS					
Cash dividends	-	-	-	-	(35,000)
Transfer to legal reserves	-	-	-	-	-
Other appropriations	-	-	(5,200)	(6,500)	(7,200)
CARRIED FORWARD					
AT END OF THE YEAR	<u>(654,498)</u>	<u>(573,377)</u>	<u>(150,378)</u>	<u>(38,761)</u>	<u>1,915</u>

BCCI**RECEIPTS & PAYMENTS ACCOUNTS****FROM 5 JULY 1991 TO 19 NOVEMBER 1991**

	<u>UK</u>	<u>IOM</u>	<u>Overseas</u>	<u>Luxembourg</u>
	<u>£m</u>	<u>£m</u>	<u>US \$ m</u>	<u>US \$ m</u>
<u>Receipts</u>				
Sales of Properties	10.5			
Cash at branches at 5 July 1991	3.4			0.3
Investments and Bank Accounts	174.9	11.4	27.1	22.1
Loan and Credit Card Receipts	27.3		1.1	
Sale of branches	0.6		5.2	
Interest received	4.0	0.3	0.2	0.2
Other	9.6	—	0.5	2.4
	<u>£ 230.3</u>	<u>£ 11.7</u>	<u>\$ 34.1</u>	<u>\$ 25.0</u>
<u>Payments</u>				
Liquidators Fees	19.9	0.3	6.2	7.6
Disbursements			0.4	
Legal Fees	3.8		3.1	0.4
Agents & Security	2.3			
Staff Costs	2.3		0.5	2.7
VAT incurred	3.5			
Establishment, Rent and Insurance	1.0		0.4	0.8
Other	1.9	0.1	1.4	1.5
	<u>£ 34.7</u>	<u>£ 0.4</u>	<u>\$ 12.0</u>	<u>\$ 13.0</u>
Balance of Funds held	<u>£ 195.6</u>	<u>£ 11.3</u>	<u>\$ 22.1</u>	<u>\$ 12.0</u>

**Touche
Ross**



NEWS RELEASE

22 November 1991

BANK OF CREDIT AND COMMERCE INTERNATIONAL SA

On 2 December 1991 there will be a further hearing in the High Court in England in relation to the adjourned petition for the liquidation of Bank of Credit and Commerce International SA ("BCCI SA"). The Provisional Liquidators of BCCI SA in England are Christopher Morris, Nicholas Lyle and John Richards. Brian Smouha has been appointed by the Luxembourg Courts as one of the Commissaires de Surveillance of BCCI Holdings (Luxembourg) SA ("Holdings") and sole Commissaire of BCCI SA. Bank of Credit and Commerce International (Overseas) Limited ("Overseas") is in provisional liquidation in Grand Cayman and Ian Wight and Robert Axford are the Provisional Liquidators.

At the hearing on 29 July 1991, the High Court adjourned the petition for a four month period. The purpose of the adjournments and of similar petitions elsewhere in the world was to enable the possibility of a restructuring of part or all of BCCI to be explored. Mr. Smouha (on behalf of the various Provisional Liquidators and other Court appointed officers of Overseas and BCCI SA) was already in discussions with the Majority Shareholders of Holdings in Abu Dhabi, with a view to settling any claims outstanding against one another, alleviating the losses suffered by creditors, and maximising returns for them. During the past four months, intensive discussions to this end have continued. These discussions are almost complete. It is therefore the intention of the Provisional Liquidators of BCCI SA, supported by Mr. Smouha and the Majority Shareholders of Holdings, to seek a further short adjournment of the petition on 2 December.

In the course of the discussions, it has become clear that assets of the BCCI Group may be claimed by local liquidators. In addition, some branches are already bringing claims to funds outside their own jurisdictions. Furthermore, the affairs of Overseas and BCCI SA are inextricably intermingled. In the absence of some overall plan for the liquidation, these factors are likely to lead to long drawn out multi-jurisdictional litigation between the different parts of the BCCI Group, to the detriment of creditors generally. Such litigation might well last for more than ten years and, during that period, it is unlikely that significant distributions could be made to the creditors.

Accordingly, Mr. Smouha has been working with representatives of the Majority Shareholders in Abu Dhabi to see whether an overall plan can be agreed and recommended to creditors, which would facilitate an earlier distribution to creditors and, by virtue of the participation of the Majority Shareholders, enhance the overall return to creditors.

The plan under discussion would involve a pooling arrangement, whereby the property and assets of BCCI SA and Overseas would be placed in one common pool for pari passu distribution to all creditors of those companies. This would avoid or reduce significantly the competing claims to assets and other litigation referred to above. BCCI SA and Overseas and any other companies which participate in the plan would waive any claims they may have against the Majority Shareholders arising out of the BCCI affair and the Majority Shareholders would similarly waive claims (other than their claims as creditors) against those companies. The Majority Shareholders would then make a cash payment available for distribution amongst those creditors of the companies and branches which participate in the common pool, who waive any legal claims they may have against the Majority Shareholders. The Majority Shareholders would also assume responsibility for dealing with certain liabilities of Overseas and BCCI SA.

The size and complexity of the affairs of the BCCI Group, including the substantial number of jurisdictions involved, and the uncertainties inherent in such figures as are available, mean that the Provisional Liquidators are unable to give a realistic estimate of the likely return to creditors in the absence of a settlement plan of the kind described above. However, preliminary calculations indicate that the return to creditors without a plan of this kind may well be less than 10 cents in the \$ and this return would not be achieved for a number of years.

The discussions between the Majority Shareholders and Mr. Smouha regarding the plan referred to above must, at this stage, necessarily be confidential. The arrangement under discussion is highly complex. Its details will depend upon the ultimate liabilities of the companies, as well as the recoveries in the liquidation. Neither the liabilities to be admitted nor the value of ultimate recoveries will be known for many years. However, if the arrangements under discussion with the Majority Shareholders can be consummated, the return to creditors will be materially enhanced and accelerated and the present estimate is that the eventual return to creditors could be within the range of 30-40 cents in the \$. This would be achieved by a combination of a cash payment and an assumption of liabilities by the Majority Shareholders.

The estimates of return to creditors exclude any assessment of recoveries from third parties by way of damages.

Discussions, although far advanced, are not finalised, but all parties are hopeful that a final agreement can be signed before the end of the year. Any arrangement would be subject to satisfaction of relevant conditions, including the approval of the Courts in Luxembourg, the Cayman Islands and England. Creditor support for the arrangements will also be required.

At the hearing on 2 December, the Provisional Liquidators will be seeking a further adjournment of the petition for the liquidation of BCCI SA until the middle of January. The additional time will enable Mr. Smouha and the provisional liquidators in England and the Cayman Islands to finalise the liquidation plan, the pooling and other arrangements required. The Majority Shareholders will support the application for adjournment.

This paper has been seen and approved by representatives of the Majority Shareholders.

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**BANK OF CREDIT AND COMMERCE
INTERNATIONAL SA**

JOINT LIQUIDATORS REPORT

16 MARCH 1992

High Court of Justice
Companies Court
Chancery Division
The Strand
London, WC2A 2LL

A. INTRODUCTION

- 1 This Report is made by the Liquidators of Bank of Credit and Commerce International SA ("BCCI SA") appointed by the Secretary of State pursuant to the Insolvency Act 1986 ("the Liquidators"). This Report has been prepared in conjunction with the liquidators of BCCI SA appointed by the District Court of Luxembourg ("the Luxembourg Court") and the liquidators of Bank of Credit and Commerce International (Overseas) Limited ("BCCI Overseas") and of Credit and Finance Corporation Limited ("CFC")

Member
DATInternational

Aberdeen, Belfast, Birmingham, Bolton, Bournemouth, Bracknell, Bristol, Cambridge, Cardiff, Coleraine, Crawley, Dartford, Edinburgh, Glasgow, Leeds, Leicester, Liverpool, London, Manchester, Milton Keynes, Newcastle upon Tyne, Newport, Nottingham, Southampton and Swansea

Principal place of business at which a list of partners' names is available
Peterborough Court, 133 Fleet Street, London EC4A 3TR

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△ appointed by the Grand Court of the Cayman Islands ("the Cayman Court"). This Report is prepared for the purposes of the application by the Liquidators due to be heard on 8 April 1992 for directions and orders (a) approving the proposed agreements with the Majority Shareholders of BCCI Holdings (Luxembourg) SA ("BCCI Holdings") and the proposed pooling agreements and (b) as to the future conduct of the liquidation of BCCI SA in England. The particular directions and orders sought by the Liquidators are:

- 1.1 That the Liquidators be authorised and empowered to execute the agreements substantially in the form of the drafts appearing in the separate bundle marked "A" and to do and execute all such documents, acts and things as may be necessary or desirable to:
 - 1.1.1 implement and bring and carry the same into full force and effect in all respects; and
 - 1.1.2 comply with and perform each of their obligations thereunder in accordance with their respective terms; and
 - 1.2 That for that purpose the agreements substantially in the form of the drafts appearing in the separate bundle marked "A" be approved; and
 - 1.3 As regards the future conduct of the liquidation of BCCI SA in England, the directions and orders appearing in the draft Order set out in Appendix 1 to this Report.
- 2 The purpose of this Report is to set out the reasons why the Liquidators consider that the orders and directions sought should be made and to set out those of the facts and matters which are in the Liquidators' view material to the application and which they consider can and should be made public. This Report is divided into the following sections:

B. The Agreements

This section describes the structure and principal features of the proposed agreements and includes a summary of their potential advantages and disadvantages.

C. Estimated Financial Position

This section sets out the estimated financial position as at 30 June 1991.

D. Assessment of the Majority Shareholder Agreements

This section sets out the benefits and disadvantages of the proposed agreements with the Majority Shareholders, including an estimate of the financial position if the agreements are implemented.

E. Assessment of the Pooling Agreements

This section describes the benefits and disadvantages of the proposed Pooling Agreements.

F. The English Order and Directions

This section describes and explains the orders and directions sought in regard to the future conduct of the liquidation of BCCI SA in England to give effect to the Pooling Agreements.

G. Directions and Orders Sought

This section sets out the particular directions and orders to be sought on 8 April 1992.

- 3 The Luxembourg Court will consider whether to authorise the liquidators of BCCI SA appointed by the Luxembourg Court ("the Luxembourg liquidators") to sign the agreements referred to above at a hearing to be held on 28 April 1992. The Cayman Court will consider whether to



authorise the liquidators of BCCI Overseas and CFC appointed by the Cayman Court (respectively "the Overseas liquidators" and "the CFC liquidators") to sign the agreements referred to above at a hearing to be held on 30 April 1992. The contents of this Report have been read and, so far as material, approved by the Luxembourg liquidators, the Overseas liquidators and the CFC Liquidators.

- 4 A list of the principal abbreviations and definitions used in this Report is set out in Appendix 2.

5 Sources and basis of information

- 5.1 Some of the information contained in this Report is the subject of earlier Reports to the Court, and in particular the Report dated 29 November 1991. Where considered appropriate and for the sake of convenience, certain passages of the Report dated 29 November 1991 have been repeated (subject to revision where appropriate) in this Report.
- 5.2 The financial information contained in this Report is derived principally from documentation held in Abu Dhabi, branch records in the United Kingdom (and Isle of Man), Luxembourg and the Cayman Islands and from discussions with BCCI management and employees in these locations. Certain financial information has been derived from accounting records held by certain other BCCI Group companies and branches where it has been possible to obtain access to those records. Collection of full financial information for the BCCI Group would require extensive worldwide co-operation from locally appointed officeholders in the jurisdictions in which BCCI operated. Such co-operation has been limited.
- 5.3 Except to the extent stated in this Report, none of the financial information obtained from third parties or from the records of BCCI



has been independently verified, nor has the financial information set out in this Report been audited by Touche Ross & Co.

- 5.4 The financial information contained in this Report is subject to considerable uncertainty (and therefore may be materially inaccurate) for the principal reasons set out in the following paragraphs.
- 5.5 So far as possible, the financial implications arising from the commencement of liquidation and similar proceedings worldwide in July 1991 have been taken into account in producing the financial information in this Report. This has required the estimation of the realisable value of assets on a break up basis less costs arising on liquidation and the inclusion within liabilities of contingencies and other unrecorded claims. As with all liquidations the realisable value of the assets and the extent of the liabilities and costs can only be known nearer the conclusion of the liquidation.
- 5.6 In the particular circumstances of this case, the uncertainties inherent in any liquidation are significantly increased by the nature and scope of BCCI's operations, and in particular the following:
- 5.6.1 The deficiencies in the accounting records maintained by the BCCI Group.
- 5.6.2 The size and geographical spread of the BCCI Group in 69 countries as illustrated in the summary of the corporate structure set out below:

<u>BCCI SA</u>	<u>BCCI Overseas</u>	<u>BCCI Holdings, other subsidiaries and affiliates</u>
47 branches	63 branches	260 branches
in 13 countries	in 28 countries	in 30 countries



- 5.6.3 The closely interlinked trading (and in particular trade finance) activities of the BCCI Group caused many contingent liabilities to be incurred which may have crystallised on liquidation.
- 5.6.4 The countries in which the BCCI Group operated were subject to many different legal systems, banking regimes, financial regulations (including foreign exchange restrictions) and political considerations.
- 5.6.5 The diversity of appointments and nature of such appointments following the actions taken by various authorities in July 1991 have given rise to problems of cooperation and coordination on a worldwide scale.

B. THE AGREEMENTS

6 Introduction

Since July 1991, discussions have been conducted with the Government of Abu Dhabi (representing the Majority Shareholders of BCCI Holdings) with a view to agreeing arrangements which would improve and accelerate the return to creditors of BCCI SA, BCCI Overseas, CFC and BCCI Holdings ("the principal BCCI Companies"). Draft proposed agreements providing for the implementation of those arrangements were initialled on 20 February 1992.

7 Overall structure of agreements

- 7.1 The proposed agreements may be broadly categorised as follows:
 - 7.1.1 Agreements with the Majority Shareholders under which the Government of Abu Dhabi will make funds available, subject



to conditions, for distribution to certain ordinary unsecured creditors of the principal BCCI Companies ("the Majority Shareholder Agreements").

- 7.1.2 Pooling agreements whereby the assets of BCCI Holdings and its subsidiaries BCCI SA, BCCI Overseas and CFC, including those branches of BCCI SA and BCCI Overseas which participate, will be pooled and distributed rateably amongst creditors ("the Pooling Agreements").

8 The Majority Shareholder Agreements

- 8.1 The principal features of the Majority Shareholder Agreements on their becoming unconditional are:
 - 8.1.1 The Government of Abu Dhabi will make substantial monies available for payment to those creditors of the principal BCCI Companies who accept an Offer to be made to them on behalf of the Government of Abu Dhabi. One of the terms of the Offer will be that the creditors release any claims they may have against the Government of Abu Dhabi and the Majority Shareholders and Related Persons. The monies made available will be held as a separate fund ("the Contribution Fund") by an independent third party ("the Paying Agent") and paid out under the terms of the Paying Agency Agreement;
 - 8.1.2 The principal BCCI Companies will give releases of all claims they may have against the Government of Abu Dhabi and the Majority Shareholders and Related Persons (other than claims to recover debts arising in the ordinary course of business as shown in their books);



- 8.1.3 The Government of Abu Dhabi, the Majority Shareholders and Related Persons will give releases of certain claims they may have against the principal BCCI Companies;
- 8.1.4 A local liquidator of the branches of BCCI SA in the UAE will take responsibility for certain liabilities attributable to the business of these branches;
- 8.1.5 The proceeds of certain litigation will be shared between the principal BCCI Companies on the one hand and the Government of Abu Dhabi and the Majority Shareholders on the other;
- 8.1.6 Subsidiaries of the principal BCCI Companies and creditors of those subsidiaries are not eligible to participate in the Contribution Fund (with the exception of BCC Gibraltar).
- 8.2 The Majority Shareholder Agreements comprise the following:
 - 8.2.1 **Contribution Agreement**
The Contribution Agreement is the main agreement whose principal features are described in Paragraph 8.1 above.
 - 8.2.2 **Paying Agency Agreement**
The Paying Agent will hold and distribute the Contribution Fund according to the terms of the Paying Agency Agreement.
 - 8.2.3 **ICIC Agreement**
The ICIC Agreement contains the terms and conditions on which the Majority Shareholders' and the principal BCCI Companies' relationships with the ICIC Group will be resolved. In particular, it provides for releases and covenants not to sue from the Majority Shareholders of claims they may have



against the principal BCCI Companies and ICIC Overseas (and other companies in the ICIC Group) and for the orderly winding up of the activities of the ICIC Group.

8.2.4 UAE Branch Liquidation Agreement

The UAE Branch Liquidation Agreement contains provisions for the separate liquidation of the eight branches of BCCI SA located in the United Arab Emirates and the terms on which assets and liabilities attributable to those branches will be made separate and independent from the worldwide liquidation of the principal BCCI Companies.

8.2.5 UNB Agreement

Under the UNB Agreement and its ancillary documents, BCCI Holdings agrees to transfer its 40 per cent interest in UNB to ADIA.

8.2.6 Litigation Agreement

The Litigation Agreement, which was signed on 20 February 1992, contains provisions for the handling of claims against the auditors of the principal BCCI Companies pending completion of the Contribution Agreement (which provides for assignment of these claims). This agreement, which is intended to have legal effect, was entered into to ensure that agreed action could be taken before the expiry of certain limitation periods.

8.2.7 Ancillary Documents

The ancillary documents comprise documents giving effect to the provisions of the other agreements (principally the Contribution Agreement). One of these documents is the Offer Letter which is the formal document which will contain the detailed terms of the Offer pursuant to which creditors may qualify to share in the Contribution Fund. The Offer will



be made on behalf of the Government of Abu Dhabi to creditors. The Offer will require to be accepted by any creditor wishing to participate in the Contribution Fund in return for a release of any claim the creditor may have against the Government of Abu Dhabi, the Majority Shareholders and Related Persons. The drafts of the ancillary documents have yet to be finalised. Copies of these will be made available to the Court as soon as practicable.

- 8.3 A summary of the main terms of the Majority Shareholder Agreements appears in Appendix 3 to this Report.

9 Summary of Benefits and Disadvantages of Majority Shareholder Agreements

- 9.1 The principal benefits of the Majority Shareholder Agreements on their becoming unconditional may be summarised as follows:
- 9.1.1 The estimated return to those creditors who qualify to share in the Contribution Fund will increase from the range of 0-10% to 30-40%;
 - 9.1.2 Distributions to creditors of the principal BCCI Companies will be accelerated;
 - 9.1.3 The principal BCCI Companies (and their creditors) will benefit from the release of substantial potential claims by the Majority Shareholders against those companies and from the assumption by other parties of certain liabilities of those companies;
 - 9.1.4 Long, complicated and multinational litigation with an uncertain outcome will be avoided.



9.1.5 These benefits are referred to further in Paragraph 15 below.

9.2 The principal disadvantages of the Majority Shareholder Agreements may be summarised as follows:

9.2.1 The principal BCCI Companies will be required to release all claims of whatever nature that they may have against the Government of Abu Dhabi, the Majority Shareholders and Related Persons arising out of the affairs of the BCCI Group (other than claims to recover debts arising in the ordinary course of business as shown in their books);

9.2.2 Creditors who accept the Offer will also be required to release all such claims;

9.2.3 The Contribution Agreement is subject to a condition that creditors whose admitted claims total US\$7,000 million must accept the Offer by 30 September 1992 or, at the option of the Government of Abu Dhabi, 30 November 1992. Only if there is widespread support from admitted creditors will it be possible for this condition to be met.

9.2.4 These disadvantages are referred to further in Paragraph 16 below.

10 The Pooling Agreements

10.1 The principal features of the Pooling Agreements are:

10.1.1 The proceeds of assets recovered by the BCCI Officeholders and by the various liquidators of the branches of BCCI SA and BCCI Overseas and of those other companies which take part will be transmitted to a central pool ("the Pool");



- 10.1.2 The creditors of BCCI SA and BCCI Overseas, and other companies which join in the Pool, will all receive the same dividend from the Pool in respect of their admitted claims; and
 - 10.1.3 The processing of creditors' claims will be conducted, and distributions to creditors effected, in a more orderly fashion by treating the liquidations of foreign branches of BCCI SA and BCCI Overseas as ancillary to the principal liquidations in Luxembourg and the Cayman Islands respectively.
- 10.2 The Pooling Agreements comprise the following:
- 10.2.1 The Main Pooling Agreement between BCCI SA, the Luxembourg Liquidators, BCCI Overseas, the Overseas Liquidators, (together "the Principal Parties") and the Liquidators;
 - 10.2.2 A series of Branch Participation Agreements between the Principal Parties on the one hand and the liquidators of a foreign branch of BCCI SA or BCCI Overseas on the other hand, whereby the liquidation of the foreign branch will be treated as ancillary to the principal liquidation in Luxembourg or the Cayman Islands;
 - 10.2.3 A series of Subsidiary Participation Agreements between the Principal Parties on the one hand and a foreign subsidiary of BCCI Holdings or BCCI SA and its liquidators on the other hand, whereby the foreign subsidiary and its creditors can participate in the Pool; and
 - 10.2.4 An agreement between the Principal Parties on the one hand and BCCI Holdings and its liquidators (when appointed) on



the other hand, whereby BCCI Holdings and its creditors will participate in the Pool.

- 10.3 A summary of the main terms of the Pooling Agreements also appears in Appendix 3 to this Report.

11 Summary of Benefits and Disadvantages of the Pooling Agreements

- 11.1 The principal benefits of the Pooling Agreements may be summarised as follows:

11.1.1 The expense, difficulty and delay of determining (as between BCCI SA and BCCI Overseas) what property is the property of one rather than of the other, and of determining what amounts (if any) are due from one to the other in respect of transactions between them, would be avoided;

11.1.2 The expense, difficulty and delay arising from the multiplicity of local liquidations of the branches of BCCI SA and BCCI Overseas would be avoided;

11.1.3 All admitted creditors of the principal BCCI Companies would receive the same dividend.

11.1.4 These benefits are referred to further in Paragraphs 21 to 24 below.

- 11.2 The principal disadvantages of the Pooling Agreements may be summarised as follows:

11.2.1 There are differences between the liquidation laws applicable to the principal liquidations in Luxembourg and the Cayman Islands;



11.2.2 There may also be differences between the liquidation laws applicable to those principal liquidations and the liquidation laws applicable to local liquidations of branches of BCCI SA and BCCI Overseas respectively;

11.2.3 These differences may potentially give rise to unfairness as between creditors.

11.2.4 These disadvantages are referred to further in Paragraph 25 below.

C. ESTIMATED FINANCIAL POSITION

12 Introduction

12.1 In this section of the Report the estimated financial position of the principal BCCI Companies as at 30 June 1991 is set out. The estimated financial position reflects the reduction of assets from book figures to their estimated net realisable value and assumes the receipt of US\$250m pursuant to the Plea Agreement referred to further in Paragraph 16.7 below. It also reflects the adjustments to the book figures of liabilities to the estimated total liabilities on liquidation. The uncertainty in respect of this financial information has been described in Paragraphs 5.4 et seq. above. The Liquidators would stress that the estimates for liabilities are particularly subject to a high degree of uncertainty.

12.2 The date of 30 June 1991 has been selected (rather than the date of winding up) because this is the latest date for which monthly branch returns are available from the books of the BCCI Group. It is also very close to 5 July 1991 (the date by reference to which liabilities



are calculated under the Contribution Agreement and the date of the regulatory authorities' intervention in the BCCI Group).

13 Change in financial position from 31 December 1989 to 30 June 1991

13.1 Included in Appendix 4 is a comparison of the financial position of the BCCI Group as disclosed in the last audited accounts at 31 December 1989 and the book figures of the assets and liabilities of the principal BCCI Companies as at 30 June 1991 based on the underlying accounting records (and in particular unaudited branch returns). In a number of instances returns for 30 June 1991 are not available and earlier returns have therefore been incorporated. The comparison includes an adjustment for those assets and liabilities as at 30 June 1991 which relate to those subsidiaries and affiliates of BCCI Holdings, BCCI SA and BCCI Overseas which are excluded from the pooling arrangements.

13.2 The comparison may be summarised as follows:

	Total assets US\$m	Total liabilities US\$m
BCCI Group audited financial information at 31 December 1989	<u>23,518</u>	<u>22,444</u>
BCCI Group book figures (unaudited and unadjusted) as at 30 June 1991	16,984	17,188
Less: Book figures for excluded subsidiaries and affiliates as at 30 June 1991	<u>(5,710)</u>	<u>(5,929)</u>
Principal BCCI Companies book figures as at 30 June 1991	<u>11,274</u>	<u>11,259</u>



14 Estimated financial position of the principal BCCI Companies as at 30 June 1991

- 14.1 Based upon the records available, the estimated net realisable value of assets of the principal BCCI Companies has been assessed at US\$1,409 million and the estimated liabilities on liquidation at US\$9,935 million. This assessment may be summarised as follows:

	Total assets US\$m	Total liabilities US\$m
Principal BCCI Companies book figures as at 30 June 1991	11,274	11,259
Adjustments to assets and liabilities	<u>(9,865)</u>	<u>(1,324)</u>
Estimated net realisable value of assets and estimated liabilities on liquidation	<u>1,409</u>	<u>9,935</u>

The adjustments to assets and liabilities are described in Appendix 4.

- 14.2 The estimated outcome shown above should not be treated as giving any firm indication of an estimated return to creditors. It represents a base position which will change whether or not the Majority Shareholder Agreements and the Pooling Agreements are implemented for the reasons given in the following paragraphs.
- 14.3 In estimating the financial outcome shown above, there is excluded any assessment of potential claims by and against the Majority



Shareholders or by and against third parties (other than debtors) and related legal costs.

- 14.4 If the Majority Shareholder Agreements and the Pooling Agreements are not implemented the principal factors which may have a materially adverse impact on the estimated outcome shown above are described in the following paragraphs.
- 14.5 It has been assumed for the purposes of the estimated financial position shown above that the proposed pooling agreements will be entered into by the principal BCCI Companies and those branches where, on the financial information currently available, it appears to be in the overall interests of creditors of those branches to do so. If the Pooling Agreements are entered into by the principal BCCI Companies (acting by the BCCI Officeholders) alone:
- 14.5.1 The liabilities shown in the estimated financial position would notionally remain the same because all creditors worldwide would be eligible to be admitted as creditors (but any distributions to creditors under local arrangements would be taken into account in making any distributions to such creditors from the principal liquidations);
- 14.5.2 The assets shown in the estimated financial position would be reduced because they include assets held by branch liquidators which are not under the direct control of the BCCI Officeholders;
- 14.5.3 Assets available to the ordinary unsecured creditors will be subject to competing claims of the various BCCI Group companies and branches. Such competing claims and the related costs of litigation would be significantly greater if the Pooling Agreements were not to be entered into.



- 14.6 The matters referred to in Paragraph 15.4 below may increase liabilities very substantially and might in certain circumstances eliminate substantially all assets under the control of the BCCI Officeholders.
- 14.7 Funds will need to be retained to meet the costs of pursuing and defending litigation. This will affect the timing of any distribution.
- 14.8 Other factors which will have an impact on the estimated financial position are referred to below in this Report.
- 14.9 Any estimate of the actual return to creditors in the absence of the Majority Shareholder Agreements is bound to be uncertain. Current estimates are that such a return, in the light of the above, is likely to be less than 10% and may in certain circumstances be minimal unless substantial recoveries are made through litigation. Any recoveries through litigation will be subject to considerable delay.

D. ASSESSMENT OF THE MAJORITY SHAREHOLDER AGREEMENTS

15 Benefits

- 15.1 The Majority Shareholder Agreements are conditional on the Pooling Agreements being approved by the Courts of Luxembourg, England and the Cayman Islands. Accordingly the benefits to creditors under the Majority Shareholder Agreements are linked with the benefits under the Pooling Agreements which are described in Section E below.

15.2 The benefits of the Majority Shareholder Agreements are primarily reflected in the estimated return to Qualifying Creditors increasing to 30 - 40%. The increase arises principally from:

15.2.1 The Contribution Fund:

15.2.2 Reduction of net liabilities arising from the agreements relating to the UAE Branches and the release of other claims.

15.3 The Majority Shareholder Agreements will significantly reduce the uncertainties described above in relation to the realisable value of assets and the ultimate level of liabilities and contingencies. The agreements if implemented will result in creditors on the one hand largely retaining the benefits arising from higher than estimated realisations and on the other being provided with protection against liabilities exceeding those estimated. This is referred to more fully in the section on financial evaluation of the agreements in Paragraph 17 below.

15.4 The releases to be provided by the Majority Shareholders will remove potential claims against the principal BCCI Companies.

15.4.1 The Liquidators are advised by their legal advisers that it would be inappropriate for the purposes of this Report to provide a detailed assessment of claims by the Majority Shareholders because to do so might be highly prejudicial to the interests of creditors were the Majority Shareholder Agreements not to become unconditional. There are however certain matters which the Liquidators are advised may properly be disclosed.

15.4.2 As appears from the ICIC Agreement, one or more of the Majority Shareholders claims to have tracing or other



proprietary claims and other claims against companies in the ICIC Group and the principal BCCI Companies. These claims arise from the alleged misappropriation and misapplication by former officers of the BCCI Group of principal sums totalling in excess of US\$2,000 million deposited with ICIC Overseas which belonged to one or more of the Majority Shareholders. These funds were allegedly misapplied for the benefit of the BCCI Group.

15.4.3 Any claim by the Majority Shareholders based on the above allegations could have serious adverse consequences for the liquidations of the principal BCCI Companies. If such a claim were to be pursued, it would prevent any worthwhile distribution being made to creditors until it had been resolved. If the tracing or proprietary claims were successful, they might eliminate substantially all the assets under the control of the BCCI Officeholders.

15.5 There are substantial benefits in the timing of payments to creditors if the Majority Shareholder Agreements are implemented. If implemented, it is hoped that creditors who accept the Offer will receive a first payment in early 1993 of about 10%.

15.6 The parties to the Contribution Agreement will co-operate in pursuing claims against third parties who may have injured or otherwise caused loss to the principal BCCI Companies or the Majority Shareholders in connection with the affairs of the BCCI Group. Net recoveries from all such claims (after deduction of costs), whether made by the principal BCCI Companies or the Majority Shareholders, will be shared equally. (Such claims do not include claims for recovery of money lent or guarantee claims or claims for the recovery of assets of the principal BCCI Companies which will be pursued by the BCCI Officeholders for the sole benefit



of the principal liquidations.) The Liquidators anticipate that such arrangements will significantly enhance the potential recoveries from pursuing such claims. One of the factors which the Liquidators consider to be material is that a large amount of documentation which will be required to pursue third party claims is located in Abu Dhabi and is not under the direct control of the BCCI Officeholders (although access has so far been given to certain documents). Under these arrangements the BCCI Officeholders will continue to have access to documents for the purpose of pursuing third party claims.

16 Disadvantages

- 16.1 The principal disadvantage of the Majority Shareholder Agreements is the term that the principal BCCI Companies must release all claims of whatever nature they may have against the Government of Abu Dhabi, the Majority Shareholders and Related Persons arising out of the activities of the BCCI Group (except those claims referred to in Paragraph 16.3 below).
- 16.2 Creditors who accept the Offer must also release all such claims.
- 16.3 The only exception to the releases by the principal BCCI Companies is that they do not include releases of claims to recover any debts arising in the ordinary course of business as shown in the principal BCCI Companies' books.
- 16.4 The Liquidators are advised by their legal advisers that it would be inappropriate to provide a detailed assessment of claims against the Majority Shareholders, because to do so might be highly prejudicial to the interests of creditors were the Majority Shareholder Agreements not to become unconditional. Litigation to establish such claims would be prolonged. It could well require a minimum of five to seven and probably more realistically ten years to bring to a



conclusion. It would be complicated and expensive. It is likely that such litigation would involve proceedings in a number of jurisdictions. Its outcome would be uncertain.

- 16.5 The Contribution Agreement, and the releases of claims against the Majority Shareholders to be given by creditors who accept the Offer, are subject to a condition that creditors whose admitted claims total US\$7,000 million (including agreed values attributable to creditors of Excluded Branches whose local liquidators give relevant covenants and releases) accept the Offer by 30 September 1992, or at the option of the Government of Abu Dhabi, 30 November 1992.
- 16.6 The high level of acceptances required means that only if there is widespread support from admitted creditors will it be possible for this condition to be met.
- 16.7 The major uncertainties regarding satisfaction of this condition relate to:
 - 16.7.1 The value of creditors who actually claim (having regard to the uncertainties in the figures for estimated liabilities referred to above in this Report);
 - 16.7.2 The admissibility of claims which are submitted;
 - 16.7.3 The logistical difficulties in the processing of claims within the given time scale;
 - 16.7.4 The impact of the screening procedures required by the Plea Agreement which was approved by the US District Court for the District of Columbia on 24 January 1992 (see Paragraph 8 (p.10) of and Appendix A to the Report to the Court dated 10 January 1992). Under the Plea Agreement, the Luxembourg



and Overseas liquidators have agreed to establish screening procedures, consistent with local law, to be operated in conjunction with regulatory authorities in the USA and elsewhere. These procedures will be designed to prevent distributions to creditors who have used their banking facilities for criminal activities. Discussions are currently taking place with a view to agreeing the screening mechanism but it has not yet been agreed. Depending on the outcome of those discussions, any agreed screening mechanism may:

- 16.7.4.1 cause further logistical difficulties in the processing of claims;
- 16.7.4.2 reduce the value of claims which would otherwise have been admitted, increasing the difficulties of meeting the US \$7,000 million condition;
- 16.7.4.3 reduce the number of branch liquidators who would be willing to participate in the pooling arrangements.

16.8 The Liquidators should also draw attention to the fact that the initialling of the principal agreements involving the Majority Shareholders does not create legally binding obligations: there are certain limited exceptions in the case of ancillary agreements which deal with certain interim arrangements pending completion of the principal agreements. Thus, it is possible, although the Liquidators consider it unlikely, that the Government of Abu Dhabi could refuse to sign the agreements even if the Liquidators were authorised to do so.

16.9 If the Majority Shareholder Agreements do not become unconditional for any of the reasons given above (or for any other reason) the costs

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arising, including the costs of seeking to satisfy the conditions, will have been wasted.

17 FINANCIAL EVALUATION OF THE MAJORITY SHAREHOLDER AGREEMENTS

- 17.1 The estimated return of 30 - 40% to those creditors who accept the Offer, if the Majority Shareholder Agreements are implemented, is based upon the following calculation:

	Assets US\$m	Liabilities US\$m
Estimated outcome (See Paragraph 14.1 above)	1,409	9,935
UAE Branches	(131)	(939)
Government of Abu Dhabi contribution: US\$1,700m less US\$26m in respect of liabilities being below US\$10,000m		
	<u>1,674</u>	<u> </u>
	<u>2,952</u>	<u>8,996</u>

- 17.2 The estimated return in accordance with the above calculation is 32.8% and does not take into account recoveries from third parties of the type referred to in Paragraph 15.6 above. The above calculation also assumes that all admitted creditors will accept the Offer. In the event that not all admitted creditors do accept the Offer (but provided the US\$7,000 million condition is still met), the sums available under the Contribution Agreement to those that do accept the Offer will be greater.

- 17.3 The sums to be made available by the Government of Abu Dhabi under the Contribution Agreement are subject to adjustments depending on (a) the levels of realisations made (together with agreed values for realisations attributable to branches whose liquidators do not agree to participate in the Pooling Agreements - referred to as "Excluded Branches") and (b) the liabilities admitted to proof (together with agreed values for liabilities attributable to Excluded Branches).
- 17.4 For the purposes of the estimated financial position shown above, it has been estimated that realisations will not exceed US\$2,500 million (this includes the agreed values for Excluded Branches explained more fully in Paragraph 17.6 below). The Government of Abu Dhabi's contribution (subject to adjustment in relation to liabilities referred to below) would accordingly be US\$1,700 million.
- 17.5 In reaching the estimated figure for liabilities of US\$8,996 million an adjustment was made in respect of estimated liabilities of US\$1,400 million attributable to Excluded Branches (see Paragraph 5.6 of Appendix 4). The adjustment to the sums to be made available by the Government of Abu Dhabi under the Contribution Agreement in respect of liabilities requires account to be taken of agreed values for liabilities attributable to Excluded Branches. However, under the Contribution Agreement the value of agreed liabilities attributable to such Excluded Branches is limited to US\$900 million in aggregate. Thus, if the estimates shown in the above financial position prove to be accurate, the liabilities to be taken into account under the Contribution Agreement will be US\$9,896 million (US\$8,996 million + US\$900 million). Under the Contribution Agreement if liabilities are below US\$10,000 million the Government of Abu Dhabi's contribution is reduced by 25 per cent of the shortfall. 25 per cent of (US\$10,000m - US\$9,896m) is US\$26m, resulting in a reduction of US\$26m in the Government of Abu Dhabi's contribution.

- 17.6 The adjustment to the Government of Abu Dhabi's contribution in respect of realisations also requires account to be taken of assets attributable to Excluded Branches. In reaching the estimated figure for assets of US\$1,409 million an adjustment was made in respect of assets of US\$527 million attributable to Excluded Branches (see Paragraph 4.7 of Appendix 4). The value of assets attributable to such Excluded Branches under the Contribution Agreement would require an increase of US\$339 million. This has been taken into account in estimating the level of realisations for the purposes of the Contribution Agreement at less than US\$2,500 million in Paragraph 17.4 above.
- 17.7 On the basis of the estimated financial position shown above, the adjustments to the Government of Abu Dhabi's contribution for realisations and liabilities would result in funds totalling US\$1,674 million being made available by the Government of Abu Dhabi.
- 17.8 If liabilities, calculated in a similar way to that described in Paragraph 17.5 above, increase to US\$12,000 million the Government of Abu Dhabi's contribution increases to US\$2,200 million; if alternatively liabilities decrease to US\$8,000 million then the Government of Abu Dhabi's contribution reduces to US\$1,200 million. As described in Paragraph 17.5, under the Contribution Agreement the adjustment to the Government of Abu Dhabi's contribution requires account to be taken of agreed values for liabilities attributable to Excluded Branches in the sum of US\$900 million. Accordingly, on figures for liabilities (for the purposes of calculating the Government of Abu Dhabi's contribution) of US\$12,000 million and US\$8,000 million, the actual liabilities to be met out of the pooled assets will be reduced to US\$11,100 million and US\$7,100 million respectively. As illustrated below the return to creditors under the terms of the Contribution Agreement, would not



be greatly affected by liabilities on liquidation falling within the range of US\$7,100 - US\$11,100 million:

	Assets (including contribution) US\$m	Liabilities US\$m	Return to creditors
of US\$1,200m	2,478	7,100	34.9%
of US\$2,200m	3,478	11,100	31.3%

18 UAE Entities

18.1 Under the UNB agreement it has been agreed that BCCI Holdings will transfer its 40% shareholding in UNB to ADIA for a nominal consideration. The Liquidators assessment of this interest is that it is not marketable and has no value. The Contribution Agreement provides that UNB be admitted to proof in the liquidations of BCCI SA and BCCI Overseas for US\$6.5 million and US\$264 million.

18.2 Under the UAE Branch Liquidation Agreement, the affairs of the UAE branches of BCCI SA will be dealt with by way of a separate and self-contained liquidation of the UAE branches. A local Liquidator of the UAE branches will take over the UAE branch assets and will take responsibility for the recorded liabilities (including recorded contingent liabilities) attributable to the businesses of the UAE branches. The book value of the assets of the branches (excluding amounts due from the BCCI Group) is estimated at US\$131 million. The liabilities are estimated to amount to US\$1.561 million. As part of the overall arrangements it has been agreed that the liquidator of the UAE branches should be allowed to prove (a) in the liquidation of BCCI Overseas for US\$344 million, representing the indebtedness from BCCI Overseas to the UAE branches, and (b) in the liquidation of BCCI SA for US\$426 million,



representing the indebtedness of other branches of BCCI SA to the UAE branches as shown in the books.

- 18.3 The Contribution Agreement provides that ADIA is to be admitted to proof in the liquidation of BCCI Overseas for US\$885 million representing a liability in respect of commercial deposits as determined from BCCI Overseas' books and records.
- 18.4 The amounts to be admitted to proof referred to in Paragraphs 18.1, 18.2 and 18.3 will be capable of increase if the entity in question can prove additional claims in the normal way but will be reduced by set-off to the extent that there are claims by the relevant BCCI company against the entity. At the moment the Liquidators are not able to say with certainty what additional claims or counter-claims there might be. For the purposes of the estimated outcome shown in Paragraph 17 above, it has been estimated that the net reduction in respect of the claims by the UAE branches will be US\$148 million. The adjustment of US\$939 million for liabilities in respect of the UAE branches is accordingly derived as follows:

	US\$ million
Total UAE branch liabilities	1,561
Less: sums admissible to proof	(770)
Add: estimated reduction in claim	<u>148</u>
	<u>939</u>

- 18.5 The effect of the UAE arrangements is that the net liabilities (taking account of the UAE assets referred to above of US\$131 million) of the principal BCCI Companies are reduced by US\$808 million. Investigation of the claims referred to in paragraphs 18.1 to 18.3 from the records available to the Liquidators has led them to conclude that there is sufficient justification to agree that, in the context of the Majority Shareholders Agreements taken together, the claims that



have been identified by UNB, ADIA and in respect of the UAE Branches can be accepted (subject to the reductions referred to in paragraph 18.4).

19 Conclusion

If the Majority Shareholder Agreements are not implemented, the Liquidators are advised that there will be little option but to pursue the Majority Shareholders through litigation. Such litigation would be prolonged. It could well require a minimum of five to seven and probably more realistically ten years to bring to a conclusion. It would be complicated and expensive. It is likely that such litigation would involve proceedings in a number of jurisdictions. Its outcome would be uncertain. The Majority Shareholder Agreements remove the uncertainties and delay which would arise from litigation with the Majority Shareholders.

20 Recommendation

The Liquidators, together with the Luxembourg liquidators, the Overseas liquidators and the CFC liquidators, consider that the Majority Shareholder Agreements offer creditors the prospect of a materially enhanced and accelerated return. They consider that in all the circumstances the Majority Shareholder Agreements represent the best option available for creditors. Accordingly, the Liquidators recommend the Majority Shareholder Agreements to the Court and to creditors. This recommendation has the unanimous and strong support of the legal advisers to the Liquidators and of the legal advisers of each of the Luxembourg liquidators, the Overseas liquidators and the CFC liquidators.

E. ASSESSMENT OF THE POOLING AGREEMENTS**21 Benefits**

21.1 The Pooling Agreements are intended to avoid, so far as practicable, difficulties, delay and expense arising from

21.1.1 the commingling of the affairs of BCCI SA and BCCI Overseas (referred to further in Paragraph 22 below); and

21.1.2 the multiplicity of local liquidations of the branches of BCCI SA and BCCI Overseas and of the other companies within the BCCI Group (referred to further in Paragraph 23 below).

21.2 The Pooling Agreements are intended to promote fairness by providing for all admitted creditors of the principal BCCI Companies (and of any other company which participates) to receive the same dividend on their admitted claims. This is referred to further in Paragraph 24 below.

22 Commingling of Affairs

22.1 The Pooling Agreements represent the most (and possibly only) practicable and efficient way in which the liquidations of the companies and branches of the principal BCCI Companies, and in particular those of BCCI SA and BCCI Overseas, can be carried out in the light of the way the affairs of the BCCI Group were conducted.

22.2 The affairs of BCCI SA and BCCI Overseas in particular were so commingled that it would be impracticable without very considerable delay and enormous expense, and might well be impossible:

- (a) to determine as between BCCI SA and BCCI Overseas, what property is the property of one rather than the other; or
- (b) to determine what amounts, if any, are due from the one to the other as a result of acts and omissions in relation to transactions which have taken place (or should have taken place) between them.

22.3 The grounds upon which the foregoing is based include the following:

- 22.3.1 Central treasury operations were designed to control the surplus funds of the entire BCCI Group. The scale of these operations was enormous, involving management of BCCI Group and other funds of approximately US\$5,000 million generated from a multitude of smaller transactions and placed both internally within the BCCI Group and with outside third parties.
- 22.3.2 Unravelling the extremely complex position which existed at 5 July 1991 would be very difficult. Central treasury activities were all recorded in the books of BCCI Overseas. However, a substantial part of central treasury funds belonged to BCCI SA. Although all the activities are recorded in BCCI Overseas' books, these activities were operated and managed by BCCI SA under a management agreement and powers of attorney.
- 22.3.3 Recorded intercompany balances between BCCI Holdings, BCCI SA and BCCI Overseas branches were more than US\$2,000 million. These relate to a very large number of individual transactions including treasury transactions, loan parking (i.e. recording loans made by one company in the books of another), recharges and trading balances.



- 22.3.4 There are numerous cross-company guarantees and letters of comfort between the principal BCCI companies. Those evaluated amount to more than US\$800 million and the eventual total will almost certainly exceed this figure.
- 22.3.5 One element of central treasury operations related to repurchase agreements. Under these repurchase agreements some US\$1 billion of both BCCI SA and BCCI Overseas assets were placed with various third party brokers in order to raise short term liquidity for the Cayman operations. Following default under the repurchase agreements, BCCI SA investments held within the BCCI Overseas treasury operations totalling some US\$370 million were sold by the brokers as part of the repurchase agreement arrangements and applied in reduction of the liabilities to the brokers.
- 22.3.6 The treatment of transactions as between BCCI SA and BCCI Overseas often distorted the true financial position of the two companies. Such treatment included loan parking and artificial fund transfers.
- 22.3.7 Many customers received loans from both BCCI SA and BCCI Overseas, often with common security. A third of the principal non-performing borrowers, for example, owe monies to both companies. In some cases customers received loans which were recorded in the books of one company but executed security documentation ostensibly to the other for the loans.
- 22.3.8 To date funds of over US\$50 million have been realised by the BCCI Officeholders which are of uncertain ownership. The question of which entity these funds belong to would have to be resolved if the Pooling Agreements were not entered into.



- 22.3.9 BCCI Overseas' operations were only initiated in the late 1970's at a time when BCCI SA started to experience capital adequacy problems. There appear to have been no obvious differences between each company in respect of geographical spread, type of activity or commercial relationships.
- 22.3.10 The central credit, international and accounts divisions were responsible for monitoring and recording group activities, and made little or no distinction between legal entities. Central management and employees were similarly organised on a geographical, rather than a corporate, basis.
- 22.3.11 Reporting and management were organised and exercised on branch and central level only and not by legal entity. Management accounts and budgets were prepared on a group basis.
- 22.3.12 CFC was in substance operated as a branch of BCCI Overseas and BCC Gibraltar was operated as if it were a branch of BCCI SA managed from London.
- 22.3.13 BCCI Holdings, BCCI SA and BCCI Overseas had common boards of directors.
- 22.3.14 The BCCI Group generally marketed itself as one entity. For example all entities used the same logo and the financial statements which were disseminated to the public were combined and included only one directors report for the principal BCCI Companies.
- 22.4 A main object of the Pooling Agreements is to avoid the difficulties, delay and expense of separating the affairs and property of BCCI SA and BCCI Overseas.



23 Multiplicity of Liquidations

23.1 Since the closure of the principal branches of BCCI SA and BCCI Overseas in July 1991 almost all of the different companies in the BCCI Group have become the subject of local liquidations or similar proceedings in the jurisdictions in which they were incorporated. In addition, most of the foreign branches of BCCI SA and BCCI Overseas have become the subject of further local liquidations or similar proceedings (under local laws) in the jurisdictions in which they were located.

23.2 If all the liquidations of the companies forming part of the BCCI Group and of branches of those companies were left to take their own course in accordance with local laws without cooperation between the liquidators, there would be the following consequences.

23.2.1 Many branches would attempt to ringfence their assets. This will reduce further the amounts available to the creditors without access to ringfenced assets. Assets held outside the three principal countries of Luxembourg, Cayman and the UK are the most likely to be ringfenced. They represent just over 50% of the estimated net realisable value of assets included in the estimated financial position described in Paragraph 14.1 above;

23.2.2 Action taken by the BCCI Officeholders to challenge ringfencing activities and branches seeking to make competing claims against assets held outside their countries would lead to disputes which could well result in litigation between BCCI Group companies and branches, with consequential delays in making distributions and increases in legal costs;



- 23.2.3 The establishing of liabilities in the claims admission process will become much more problematical in the absence of pooled resources and co-operation;
- 23.2.4 There would be a multiplicity of distributions in which different levels of dividend would be payable. As regards the foreign branches of BCCI SA and BCCI Overseas, there would in addition be a multiplicity of distributions in respect of the same company, forcing creditors to establish one claim against the same company in different countries many times over;
- 23.2.5 The realisation of assets, which requires international co-operation and co-ordination, will also be more difficult. This applies not only to realisation of debts but also to the pursuit of third party claims which may be undermined by fragmentation of the liquidations of the original BCCI Companies.

23.3 In these circumstances there would be very considerable delay in and uncertainty as to any eventual return to creditors. A further main object of the Pooling Agreements is to avoid by agreement, so far as is practicable and in a manner consistent with the local laws involved, the adverse consequences referred to above.

24 Equality of Dividends

- 24.1 The Pooling Agreements provide for all admitted creditors of the principal BCCI Companies (and of any other Company which participates) to receive the same dividend on their admitted claims. In view of the way the affairs of the principal BCCI Companies were conducted and the commingling of their affairs referred to in Paragraph 22 above, the Liquidators consider that this equality of treatment represents the fairest solution.

- 25.1 The Liquidators should draw the attention of the Court to the following principal difficulties of which they are aware in connection with the Pooling Agreements.
- 25.2 The principal potential disadvantage arises from the differences in the liquidation laws applicable to the various jurisdictions. Although creditors of each of the companies who participate in the Pooling Agreements will receive the same dividend from the Pool, admission to the Pool of each claim will depend upon the law applicable to the principal liquidation (i.e. the liquidation in the country of incorporation) of each company which takes part. The two most important principal liquidations are those of SA in Luxembourg and Overseas in the Cayman Islands. The laws applicable in the Cayman Islands are materially different in certain respects from those applicable in Luxembourg (for example with regard to set-off, "catching up" in future distributions by creditors who prove after distributions have already been made, and "hotchpot", a requirement in one liquidation that credit be given for distributions received in another). It is believed that it may be possible for some material differences to be modified by specific directions. If not, in relation to catching up and hotchpot there are express provisions in the draft of the Main Pooling Agreement which may have to be revised.
- 25.3 There is a further potential difficulty arising from the difference between the liquidation laws applicable to the principal liquidations in Luxembourg and the Cayman Islands and those applicable to local liquidations of branches of SA and Overseas respectively. As regards the position in England, differences which might give rise to unfairness are considered below in Section F. Although the Pooling Agreements are intended to be facultative and flexible to enable certain differences in applicable laws to be accommodated within the



overall arrangements, these differences may for a variety of reasons have the effect of preventing branches from participating in the Pooling Agreements.


- 25.4 A further potential difficulty arises as a result of the screening mechanism to be established under the Plea Agreement entered into with various United States prosecuting and regulatory authorities. The screening mechanism will extend to creditors of branches who wish to participate in the Pool. The impact that these procedures will have on whether such participation takes place is uncertain.

26 Recommendation

The Majority Shareholder Agreements are conditional on the Pooling Agreements being approved by the Courts in England, Luxembourg and the Cayman Islands. Whether or not the Majority Shareholder Agreements are approved, the Liquidators recommend the Pooling Agreements to the Court and to creditors. This recommendation has the unanimous and strong support of the Liquidators' legal advisers. The Luxembourg liquidators, the Overseas liquidators and the CFC liquidators have each confirmed that (with the benefit of their own legal advice) they will be making the same recommendation to their respective Courts.

F. THE ENGLISH ORDER AND DIRECTIONS

- 27 The object of the English Order and Directions and of the provisions in the Pooling Agreement which relate to the future conduct of the liquidation of BCCI SA in England is to ensure that the conduct of the liquidation of BCCI SA in England will be fair, effective and efficient in the context of the liquidation of BCCI SA in Luxembourg and the pooling of the assets of BCCI SA with those of the other principal BCCI Companies.

28  The provisions in the Pooling Agreement which are particularly relevant to the future conduct of the liquidation of BCCI SA in England appear in Part V and the Second Schedule. These may be summarised as follows:

28.1 The Luxembourg liquidators, the Overseas liquidators and the Liquidators will co-operate with each other with a view to maximising the realisation of the assets of BCCI SA and BCCI Overseas. The Liquidators will be primarily responsible for realising assets of BCCI SA situated within the jurisdiction of the English Court.

28.2 The Liquidators will be responsible for determining the claims of all creditors of BCCI SA whose claims are given preferential status under Section 175 of the Insolvency Act 1986 ("English preferential claims").

28.3 Realisations from the assets of BCCI SA made by the English Liquidators would be applied as follows:

28.3.1 In payment of the costs, charges and expenses incurred by, and the remuneration of, the Liquidators payable in the English liquidation (including payments in respect of any indemnity to which the Liquidators are entitled) in accordance with the laws of England;

28.3.2 In payment of English preferential claims, subject to adjustment so as to ensure that no such claimant receives a greater preference than that to which he is entitled under the 1986 Act by reason of payments which he receives or is entitled to receive in a liquidation of BCCI SA in another jurisdiction;

28.3.3 Subject to the matters described in the following paragraphs of this Report, the Liquidators would be authorised to transmit



the balance to the Luxembourg liquidators to be dealt with by them in accordance with the Main Pooling Agreement and the law applicable to the liquidation of BCCI SA in Luxembourg.

- 28.4 Certain differences exist between the laws applicable to liquidations in Luxembourg and the laws applicable to liquidations in England which the Liquidators recognise might lead to unfairness in the absence of specific provision being made before the transmission of realisations to the Luxembourg liquidators. The following are the principal instances of which the Liquidators are currently aware:
- 28.4.1 Claimants with proprietary or trust claims may be prejudiced by such differences in applicable law. The Liquidators are advised by their Luxembourg lawyers that trust claims may generally not be recognised under applicable Luxembourg law. Accordingly, the proposed English Order contains a specific provision enabling the Liquidators to make provision, before transmitting funds to the Luxembourg liquidators, in relation to any claim that assets in the hands of the Liquidators are not assets of BCCI SA available for distribution to creditors of BCCI SA but are the property of the claimant.
- 28.4.2 It would appear that the laws of set-off in the liquidation of BCCI SA in Luxembourg may give more limited rights of set-off than the laws which apply to the liquidation in England. In addition, there may be claims (other than English preferential claims) which would be admissible in the English liquidation of BCCI SA but would not be admissible in the Luxembourg liquidation. These matters are referred to in Part V of the Pooling Agreement as matters which may require provision to be made before the transmission of funds to the Luxembourg liquidators. However, it is not considered appropriate at this stage to seek any specific direction or



order: the Liquidators would propose to seek directions as to these matters under the general liberty to apply as and when problems of this nature arise in practice.

28.5 The proposed English Order also makes provision for arrangements to be made by the Liquidators with the Luxembourg liquidators to facilitate:

28.5.1 The ascertainment of the claims of the creditors (other than English preferential claims) which are capable of being admitted in the liquidation of BCCI SA in Luxembourg;

28.5.2 The quantification of such claims; and

28.5.3 Distributions to which creditors may be entitled in respect of such claims.

It is also proposed that for these purposes, the Liquidators should be enabled to arrange (a) for claims to be processed and examined by the Liquidators and (if thought fit) referred for determination to the English Court subject to such audit or supervisory procedures as the Luxembourg liquidators may from time to time require in order to enable such claims to be admitted in the liquidation of BCCI SA in Luxembourg, and (b) for distributions to be made by the Liquidators of aggregate sums paid to them by the Luxembourg liquidators for such purpose. The object of these provisions is to enable arrangements to be made for the more efficient and expeditious conduct of the liquidation of BCCI SA.

G. DIRECTIONS AND ORDERS SOUGHT

29 The Liquidators accordingly seek directions and orders:

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29.1 That the Liquidators be authorised and empowered to execute the agreements substantially in the form of the drafts appearing in the separate bundle marked "A", and to do and execute all such documents, acts and things as may be necessary or desirable to:

29.1.1 implement and bring and carry the same into full force and effect in all respects; and

29.1.2 comply with and perform each of their obligations thereunder in accordance with their respective terms; and

29.2 That for that purpose the agreements substantially in the form of the drafts appearing in the separate bundle marked "A" be approved;

29.3 In the terms of the draft Order appearing in Appendix 1 to this Report.

30 There are a number of matters which require resolution by the Liquidators before the hearing due to take place on 8 April 1992. Should they not be satisfactorily resolved, or should any other matters arise which the Liquidators consider should be drawn to the attention of the Court in advance of the hearing, the Liquidators would propose to submit a supplemental report to the Court.

Christopher Morris

For and on behalf of the Liquidators

16 March 1992

APPENDIX 1

THE ENGLISH ORDER

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT
THE VICE CHANCELLOR (THE RIGHT HONOURABLE SIR DONALD
NICHOLLS)
[] April 1992

No [007615 of 1991]

IN THE MATTER OF BANK OF CREDIT AND COMMERCE INTERNATIONAL SA
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

DRAFT/ O R D E R

The Application of the above-named Bank of Credit and Commerce International SA (hereinafter called "BCCI SA") by its joint liquidators Christopher Morris, Nicholas Roger Lyle, John Parry Richards and Stephen John Akers, all of Messrs Touche Ross & Co. Friary Court, 65 Crutched Friars, London, EC3N 2NP, appointed as such by the Secretary of State for Trade and Industry on the 14th day of January 1992 (such joint liquidators being hereinafter called "the English Liquidators") coming on this day to be heard

AND UPON HEARING, etc.

AND UPON READING, etc.

AND IT APPEARING

- (i) that by an order made by the District Court of the Grand Duchy of Luxembourg (hereinafter called "the Luxembourg Court") on the 3rd day of January 1992 BCCI SA was placed in liquidation in the jurisdiction in which it was incorporated;
- (ii) that by the said order Georges Baden and Julien Roden, both residing in Luxembourg, and Brian Smouha, residing in London, were appointed by the Luxembourg Court as joint liquidators of BCCI SA (such persons or other the person or persons for the time being holding office as liquidators of BCCI SA appointed as such by the Luxembourg Court being hereinafter referred to as "the Luxembourg Liquidators");
- (iii) that in addition to its branches in England BCCI SA had branches in twelve other jurisdictions;
- (iv) that it is expedient that the determination of the claims of the creditors of BCCI SA (other than the claims of creditors whose claims are given preferential status in a liquidation of SA in a jurisdiction other than the Grand Duchy of Luxembourg) and the distribution of assets of BCCI SA to such creditors (other than as aforesaid) should be carried out in accordance with one liquidation; and
- (v) that it is expedient that the liquidation in accordance with which such determination and distribution should be carried out should be the liquidation of BCCI SA by the Luxembourg Court in Luxembourg

THIS COURT DOTH ORDER that subject to the terms and conditions set out in the Schedule to this Order and to provisions being made for the matters referred to in

the said Schedule in accordance with the said terms and conditions the English Liquidators as joint liquidators of BCCI SA appointed as such by this Honourable Court be at liberty to transmit to the Luxembourg Liquidators in Luxembourg for the purposes of the liquidation of BCCI SA by the Luxembourg Court all proceeds of the realisation of BCCI SA Property which are now or may hereafter be or come within the jurisdiction of this Honourable Court (such proceeds being hereinafter referred to as "English Proceeds")

AND IT IS ORDERED, ETC. [e.g., as to costs]

AND THE ENGLISH LIQUIDATORS are to have general liberty to apply from time to time for further directions in relation to the matters provided for in the Schedule to this Order.

THE SCHEDULE

- (1) The English Liquidators shall be at liberty to pay or provide for in full out of English Proceeds from time to time in their hands the costs charges and expenses incurred by, and the remuneration of, the English Liquidators payable in accordance with the Insolvency Act 1986 (hereinafter called "the 1986 Act") and the rules made thereunder (including payments in respect of any indemnity to which the English Liquidators are entitled)
- (2) The English Liquidators shall be at liberty to determine in the winding-up of BCCI SA by this Honourable Court (hereinafter called "the English Liquidation") the claims of all creditors of BCCI SA (hereinafter called "Preferential English Claims") which are payable in full in priority to other claims of creditors of BCCI SA by reason of being given preferential status by Section 175 of the 1986 Act
- (3) Subject to Paragraph 4 below the English Liquidators shall be at liberty to pay or provide for in full out of the English Proceeds from time to time in their hands the claims of any creditors of BCCI SA which are Preferential English Claims
- (4) The English Liquidators shall be entitled to take such steps as they think fit (including the withholding of payment of a particular Preferential English Claim pending receipt of information or the acceptance by the claimant of such terms as the English Liquidators may prescribe) to ensure that no claimant receives, when the proposed payment out of English Proceeds is aggregated with any payment which the claimant has received or is entitled to receive in a liquidation of BCCI SA (which expression shall include the analogous procedure designed to result in the realisation of assets of BCCI SA with a view to payments being made to creditors of BCCI SA) in another jurisdiction, a

greater preference than that to which he is entitled under Section 175 of the 1986 Act

- (5) The English Liquidators shall be at liberty to make such provision as they shall think fit in relation to any claim (whether based upon the existence of security or rules of law and equity or otherwise) that assets in the hands of the English Liquidators are not English Proceeds available for distribution to creditors of BCCI SA but are the property of the claimant
- (6) The English Liquidators shall be at liberty to make such arrangements with the Luxembourg Liquidators as they think fit to facilitate:
 - (a) the ascertainment of the claims of the creditors (other than Preferential English Claims) which are capable of being admitted in the liquidation of BCCI SA in Luxembourg;
 - (b) the quantification of such claims; and
 - (c) distributions to which creditors in respect of such claims may be entitled

and for that purpose may (without prejudice to the generality of the foregoing) arrange for claims to be processed and examined by the English Liquidators and (if thought fit) referred for determination to the English Court subject to such audit or supervisory procedures as the Luxembourg Liquidators may from time to time require in order to enable such claims to be admitted in the liquidation of BCCI SA in Luxembourg and may arrange (subject to audit and supervisory procedures as aforesaid) for distributions to be made by the English Liquidators of aggregate sums paid to them by the Luxembourg Liquidators for such purpose.

APPENDIX 2

Definitions

BCCI SA	-	Bank of Credit and Commerce International SA
BCCI Overseas	-	Bank of Credit and Commerce International (Overseas) Limited
BCCI Holdings	-	BCCI Holdings (Luxembourg) SA
CFC	-	Credit and Finance Corporation Limited
The principal BCCI Companies	-	BCCI Holdings, BCCI SA, BCCI Overseas and CFC
BCCI or BCCI Group	-	BCCI Holdings and its subsidiaries and affiliates
BCC Gibraltar	-	Bank of Credit and Commerce Gibraltar Limited
UAE branches	-	The United Arab Emirates branches of BCCI SA
Liquidators	-	The liquidators of BCCI SA appointed by the Secretary of State pursuant to the Insolvency Act 1986
Luxembourg liquidators	-	The liquidators of BCCI SA appointed by the Luxembourg Court.
Cayman liquidators	-	The liquidators of BCCI Overseas appointed by the Cayman Court.
BCCI Officeholders	-	The liquidators of BCCI Holdings (when appointed), the Luxembourg liquidators, the Overseas liquidators, the CFC liquidators and the Liquidators



The Cayman Court	-	The Grand Court of the Cayman Islands
The English Court	-	The High Court of Justice
The Luxembourg Court	-	The District Court of Luxembourg
ADIA	-	The Abu Dhabi Investment Authority
Contribution Fund	-	The fund comprising the contribution by the Government of Abu Dhabi pursuant to the Contribution Agreement.
Creditors	-	Creditors admitted to the liquidation of BCCI Holdings, BCCI SA, and BCCI Overseas
Excluded Branches	-	Branches of BCCI SA and BCCI Overseas whose liquidators do not agree to participate in the Pooling Agreements.
Majority Shareholder Agreements	-	Agreements with the Majority Shareholders under which the Government of Abu Dhabi will make funds available, subject to conditions, for distribution to certain ordinary unsecured creditors of the principal BCCI Companies.
Majority Shareholders	-	<ul style="list-style-type: none"> (a) His Highness Shaikh Zayed bin Sultan al Nahyan, Ruler of the Emirate of Abu Dhabi and President of the United Arab Emirates; (b) His Highness Shaikh Khalifa bin Zayed al Nahyan (c) The Government of the Emirate of Abu Dhabi; and (d) ADIA.
Offer	-	The Offer to be made to Creditors on behalf of the Government of Abu Dhabi under which those who accept will be able to participate in the Contribution Fund.



Plea Agreement	-	The Agreement dated 19 December 1991 between US Federal and New York prosecuting authorities and the principal BCCI Companies (other than CFC) and their then Court appointed officeholders and others in relation to certain U.S. Federal and New York criminal proceedings.
Pool	-	The pool of the assets of the principal BCCI companies and of branches of BCCI SA and BCCI Overseas participating in the Pooling Agreements.
Pool creditors	-	Creditors admitted to the liquidations of BCCI Holdings, BCCI SA, BCCI Overseas, CFC and (if it participates in the Pooling Agreement) BCC Gibraltar
Pooling Agreements	-	Agreements whereby the assets of BCCI Holdings and its subsidiaries BCCI SA, BCCI Overseas and CFC, including participating branches of BCCI SA and BCCI Overseas, will be pooled and distributed rateably amongst creditors.
Qualifying Creditor	-	A creditor to whom the Offer is made, who accepts it and who executes the required release of claims against the Majority Shareholders and the Related Persons.
Related Persons	-	Persons (defined in the Contribution Agreement) being generally members related to or connected with the ruling families of the territories forming the United Arab Emirates, certain officeholders in Abu Dhabi, or UAE Government controlled organisations.
Relevant Proceedings	-	Proceedings relating directly or indirectly to the BCCI Group but not including claims that are specifically reserved under the various agreements or actions for the enforcement of those agreements.
UAE Entities	-	UNB, ADIA and the Liquidator of the UAE Branches.
UNB	-	Union National Bank (formerly called Bank of Credit and Commerce (Emirates)).



"APPENDIX 3"

SUMMARY OF THE PROPOSED AGREEMENTS

INTRODUCTION

1. The terms of a number of agreements have been agreed between the Principal Liquidators and the Government of the Emirate of Abu Dhabi and these are summarised in this document. The Agreements referred to are as follows:-

- (A) The Pooling Agreement
- (B) The Contribution Agreement
- (C) The Paying Agency Agreement
- (D) The ICIC Agreement
- (E) The UAE Branches Liquidation Agreement
- (F) The UNB Agreement
- (G) The Litigation Agreement

Each is dealt with in the appropriate section of this paper. The execution of these Agreements (other than the Litigation Agreement which is in force) is subject to the approval of the Luxembourg, Cayman and English Courts.

2. This document contains a summary of the main terms of complex legal documents. It is intended that the summary covers the main terms of those documents having commercial effect. It is however no more than a summary. It should not be relied on other than for general purposes, and where appropriate, reference should be made to the relevant terms of the various agreements.

3. In Section H of this paper there is a brief explanation of the various ancillary documents that are provided for under the various agreements. These are mainly documents which are necessary or desirable to give effect to the terms of the agreements themselves. At the present time they have not been formally agreed.

4. This paper should be read in the context of the Report to the Court to which it is an Appendix and terms that are defined for the purposes of that report have the same meaning in this paper.



SECTION A: THE POOLING AGREEMENTS

Principal features of the Pooling Agreements

1. The principal features of the proposed Pooling Agreements, as regards those companies and foreign branches which take part, are that:
 - (a) the proceeds of assets recovered by the various liquidators will be transmitted to the Pool;
 - (b) the creditors of BCCI SA and BCCI Overseas, and other companies which join in the Pool, will all receive the same dividend from the Pool in respect of their admitted claims.
 - (c) the processing of creditors' claims will be conducted, and distributions to creditors effected, in a more orderly fashion since the liquidations of foreign branches will be treated as ancillary to the principal liquidations in Luxembourg and the Cayman Islands respectively;

The Mechanics of Pooling

2. The proposed Pooling Agreements involve a number of agreements as follows:
 - (a) an agreement ("the Main Pooling Agreement") between BCCI SA, its Luxembourg Liquidators, BCCI Overseas, its Cayman Liquidators, and the English Liquidators of BCCI SA;
 - (b) a series of agreements ("Branch Participation Agreements") between BCCI SA, its Luxembourg Liquidators, BCCI Overseas, and its Cayman Liquidators (collectively "the Principal Parties") on the one hand and the liquidators of a foreign branch of BCCI SA or BCCI Overseas on the other hand, whereby the liquidation of the foreign branch will be treated as ancillary to the Principal Liquidation in Luxembourg or the Cayman Islands (see Paragraph 8 below);

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- (c) a series of agreements ("Subsidiary Participation Agreements") between the Principal Parties on the one hand and a foreign subsidiary and its liquidators on the other hand, whereby the foreign subsidiary and its creditors can participate in the Pool (see Paragraph 11 below); and
- (d) an agreement ("Holdings Participation Agreement") between the Principal Parties on the one hand and BCCI Holdings and its liquidators (when appointed) on the other hand, whereby BCCI Holdings and its creditors can participate in the Pool (see Paragraph 11 below).

The Main Pooling Agreement

3. The Main Pooling Agreement contains the following principal provisions:

- (a) provisions for co-operation between the Luxembourg Liquidators and the Cayman Liquidators (in this Section referred to as "the Principal Liquidators") in the realisation of the assets of BCCI SA and BCCI Overseas; and for the proceeds of all realisations to be placed in the Pool;
- (b) provisions for periodic reviews of the Pool by the Principal Liquidators to determine the amounts, if any, which they consider to be available for distribution to creditors of BCCI SA and BCCI Overseas, and of other companies joining the Pool ("the Pool Creditors");
- (c) provisions for the companies participating in the Pool to receive from the Pool such amount as will result in their Pool Creditors receiving the same dividend on their admitted claims ("Admitted Pool Claims");



- (d) provisions for the proceeds of assets of BCCI SA realised by the English Liquidators to be transmitted to the Luxembourg Liquidators to be dealt with by them in accordance with the Main Pooling Agreement and the law applicable to the liquidation of BCCI SA in Luxembourg, (subject to payment of, or reserves in relation to, costs of the liquidation and claims which are preferential by English law.) Provision is also made for arrangements to be made by the English Liquidators with the Luxembourg Liquidators to facilitate
- (1) the ascertainment of the claims of the creditors (other than English preferential claims) which are capable of being admitted in the liquidation of BCCI SA in Luxembourg;
 - (2) the quantification of such claims; and
 - (3) distributions to which creditors may be entitled in respect of such claims.

It is also proposed that for these purposes the English Liquidators should be enabled to arrange

- (1) for claims to be processed and examined by them (and where appropriate referred to the English Court); and
 - (2) for distributions to be made by them of aggregate sums paid to them by the Luxembourg Liquidators for such purpose; and
- (e) provisions for participation in the Pool by foreign branches, by foreign subsidiaries and by BCCI Holdings.

4. Although creditors of each of the branches and companies who join in the Pool will receive the same dividend from the Pool on their Admitted Pool Claims, admission of each claim will depend upon the law applicable in the principal liquidation (i.e. the liquidation in the country of incorporation) of each company which takes part. For

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example, (subject to Paragraphs 5 and 10 below) the claim of a creditor of BCCI SA will only be admissible to participate in the Pool to the extent that it is admissible in the liquidation of BCCI SA in Luxembourg; this will apply as much to a creditor of BCCI SA who deposited his money with a branch of BCCI SA in England (or with any other foreign branch of BCCI SA which participates in the Pool) as to a creditor of BCCI SA who deposited his money in Luxembourg.

5. There are differences between the liquidation laws applicable in the different jurisdictions. For example, whereas the laws applicable in England and in the Cayman Islands are substantially the same, those laws are materially different from those in Luxembourg. It is believed that it may be possible for some material differences to be modified by specific directions. There are some express provisions in the Pooling Agreement, in relation to these matters, which are inconsistent with what may be the general practice in a liquidation in Luxembourg. To the extent that modification does not prove to be possible, these provisions will have to be revised.

6. As a result of the Plea Agreement, the Principal Liquidators have agreed to establish screening procedures, consistent with local law, to be operated in conjunction with regulatory authorities in the USA and elsewhere. These procedures will be designed to prevent distributions to creditors who have used their banking facilities for criminal activities. They will extend to creditors of foreign branches who wish to participate in the Pool.

7. Although it is open to all foreign subsidiaries of BCCI Holdings to participate in the Pool provided that the Principal Liquidators agree, the only foreign subsidiaries likely to participate are CFC and BCC Gibraltar. It should be noted that except for CFC and BCC



Gibraltar, foreign subsidiaries and their creditors are not able to benefit from the funds being made available by the Government of Abu Dhabi under the Contribution Agreement - see Section B below.

Branch Participation Agreements

8. The Branch Participation Agreement contains the following principal provisions:

- (a) The provisions fall into two categories, those which would come into force on signature and requisite Court Approvals, and those which are conditional on the Contribution Agreement becoming unconditional (see Section B below).
- (b) The provisions which would come into force on signature and requisite Court Approvals are:
 - (i) provisions for co-operation in the realisation of assets;
 - (ii) provisions for the supply of information by the liquidators of the foreign branch to the Principal Liquidators as the case may be; and
 - (iii) provisions whereby surplus assets (after payment of, or reserves in relation to, costs of the local liquidation or local preferential claims) would be held in escrow pending the Contribution Agreement becoming unconditional.
- (c) The provisions which would come into force only if the Contribution Agreement becomes unconditional are provisions whereby:
 - (i) subject to payment of, or reserves in relation to, costs of the liquidation, claims which are preferential by local law, and claims to ownership of assets, proceeds of assets in the hands of the local liquidators are to be transmitted to the Pool; and



- (ii) arrangements may be made for local involvement in the admission of local claims in the Principal Liquidation, including (if this is approved by the courts in the Cayman Islands and in Luxembourg) involvement of local courts.

9. Although processing of a claim may take place locally and local courts may be involved, the object of the process will be to result in the claim being admitted in the Principal Liquidation in accordance with the laws applicable to that liquidation (subject to Paragraphs 5 and 10); and the claim will only become an Admitted Pool Claim if it passes that test.

10. Save in the case of creditors given preferential status by local law, the only distribution in which creditors of the branch will be entitled to participate will be the distribution made in the Principal Liquidation out of the Pool.

Subsidiary and Holdings Participation Agreements

11. The Subsidiary and Holdings Participation Agreements are substantially similar to Branch Participation Agreements, save as follows:

- (a) Although the assets of the company concerned will be transmitted to the Pool, distribution will be to creditors whose claims are admitted in the local liquidation of the company concerned, in accordance with its local law. No laws of any other jurisdiction will be involved.
- (b) Because the companies are legal entities separate from BCCI SA and BCCI Overseas, and the claims of their creditors will be admitted locally, the provisions relating to the supply of information to the Principal Liquidators are more limited than those which apply to the foreign branches.

Conditions

12. The Main Pooling Agreement is conditional only on the obtaining of the necessary court orders from the courts in Luxembourg, the Cayman Islands and England approving the agreement and authorising the relevant liquidations entering into it and implementing it in all respects. It is not conditional in any way on the approval or execution of the Contribution Agreement. The Participation Agreements of BCCI Holdings, CFC, BCC Gibraltar or any of the branches will be subject to obtaining the necessary court orders or complying with relevant local requirements.

Law and Arbitration

13. The Main Pooling Agreement is governed by English law and contains a provision for disputes to be subject to Arbitration under the rules of the London Court of International Arbitration. These provisions will also apply to Participation Agreements under which BCCI Holdings and foreign branches and subsidiaries participate in the Pool.



SECTION B: THE CONTRIBUTION AGREEMENT

The Principal Features of the Agreement

1. The principal features of the proposed agreement with the Government of Abu Dhabi are as follows:
 - (a) The Government of Abu Dhabi will make substantial funds available for payment to those creditors of the Principal BCCI Companies who accept an Offer to be made to them on behalf of the Government of Abu Dhabi. One of the terms of the Offer will be that the creditors waive any claims they may have against the Government of Abu Dhabi, the Majority Shareholders and the Related Persons. The monies made available will be held as a separate fund by the Paying Agent under the terms of the Paying Agency Agreement (See Section C below);
 - (b) The principal BCCI Companies will give releases of certain claims they may have against the Government of Abu Dhabi, the Majority Shareholders and the Related Persons.
 - (c) The Government of Abu Dhabi, the Majority Shareholders and the Related Persons will give releases of certain claims they may have against the principal BCCI Companies;
 - (d) The Government of Abu Dhabi will assume certain liabilities of the principal BCCI Companies;
 - (e) The proceeds of certain litigation will be shared between the principal BCCI Companies on the one hand and the Government of Abu Dhabi and the Majority Shareholders on the other; and

Whilst certain provisions of the Agreement will be in force upon execution, the majority are conditional upon the satisfaction or waiver of the conditions referred to in paragraph 18 below.



Summary of Principal Terms

The Government's Contribution

2. Under the Contribution Agreement, the Government of Abu Dhabi will make cash payments, initially of U.S.\$1.7 billion, into the Contribution Fund in the following instalments:

- (a) US\$300 million : on the 7th business day after the last date when any of the court orders necessary to approve the Contribution Agreement are capable of appeal;
- (b) US\$500 million : on 20th June 1992 or, if later, the date referred to in (a) above;
- (c) US\$500 million : on 20th June 1993;
- (d) US\$400 million : on 20th June 1994.

The payments referred to above are to be paid without set off or deduction whatsoever and the two payments referred to in (a) and (b) are to be made on the specified dates and are not conditional on anything other than the court orders referred to.

3. The cash so paid ("the Government's Contribution") will be held in the Contribution Fund by an independent third party ("the Paying Agent") under the Paying Agency Agreement. The Contribution Agreement provides that after June 1994, periodical adjustments will be made depending on the levels of realisations made, and liabilities admitted to proof by, the Liquidators of the Principal BCCI Companies (in this Section referred to as "the Principal Liquidators") as follows:

- (a) If realisations made by the Liquidators (together with agreed values for realisations attributable to branches whose Liquidators do not agree to participate in the proposed Pooling Arrangements - referred to as "Excluded Branches" and some other agreed

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adjustments) are equal to or less than U.S.\$2.5 billion, the Government's Contribution will be U.S.\$1.7 billion. If realisations exceed U.S.\$2.5 billion then:

- (i) if realisations are less than \$2.8 billion the Government's Contribution will be \$1.7 billion less the amount by which realisations exceed \$2.5 billion, or if less, \$100 million; and
- (ii) if realisations exceed \$2.8 billion the Government's Contribution will be \$1.6 billion less one half of the excess.

This adjustment will be paid out of the Pool by the Principal Liquidators.

- (b) If liabilities admitted to proof (together with agreed values for liabilities attributable to Excluded Branches and some other agreed adjustments) exceed U.S.\$10 billion, the Government's Contribution (as adjusted in respect of realisations under (a) above) will be increased by 25% of such excess subject to a maximum increase of U.S.\$500 million, and this increase will be paid into the Contribution Fund by the Government of Abu Dhabi. If such liabilities are less than U.S.\$10 billion, the Government's Contribution (as adjusted in respect of realisations under (a) above) will be reduced by 25% of the shortfall subject to a maximum reduction of U.S.\$500 million, and this reduction will be paid out of the Contribution Fund to the Government of Abu Dhabi.

- 4. In connection with the adjustments to be made as described in paragraph 3 the following additional points are provided:-



- (a) The adjustments will be made by reference to a Liquidation Certificate to be prepared by the Principal Liquidators as at 30th June in 1994 and each subsequent year, which is to be agreed with the Government of Abu Dhabi or, failing agreement, to be settled by arbitration.
- (b) If any adjustment by reference to realisations has resulted in a payment out of the Pool to the Government of Abu Dhabi, and subsequently any amounts would be due to be paid to the Paying Agent, such payment is to be made into the Pool to the extent of such earlier payment out of the Pool.
- (c) Any payments to be made by the Principal Liquidators out of the Pool will be paid in full in priority to any dividends to creditors.
- (d) No payment will be made as a result of the application of these provisions and the relevant provisions of the Paying Agency Agreement which will result in the Government of Abu Dhabi receiving back more than the amount it has contributed, save in certain limited circumstances which are referred to in paragraph 5 of Section C.

Distribution of the Government's Contribution

5. The Government's Contribution is to be distributed by the Paying Agent under the provisions of the Paying Agency Agreement (see Section C). The main purpose of these arrangements is to ensure that the amount of the Contribution Fund is paid out to those creditors of BCCI Companies who have accepted the offer to be made on behalf of the Majority Shareholders. These arrangements may be summarised as follows:-

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(a) Only creditors of the Principal BCCI Companies (BCCI SA, BCCI Overseas, Holdings and CFC) are eligible to share in the Government's Contribution: creditors of other subsidiaries of those companies are not so eligible except for BCC Gibraltar. The detailed terms on which creditors may qualify to share in the Government's Contribution are to be contained in an offer ("the Offer"). The Offer will be made on behalf of the Government of Abu Dhabi to creditors in a separate communication. A creditor will only qualify to share in the Government's Contribution if he accepts the Offer, one of the terms of which is that he must execute a release of any claims that he may have against the Government of Abu Dhabi, the Majority Shareholders and the Related Persons.

(b) The Government's Contribution will be shared rateably amongst the Qualifying Creditors in proportion to the amounts of their claims admitted in the liquidations adjusted as necessary to disregard any interest for the period since 5th July 1991.

(c) Certain creditors are excluded from the terms of the Offer. These include governmental authorities in respect of fines or other imposts, and certain parties in respect of whom claims are to be assigned to the Government of Abu Dhabi. (See paragraph 8 below.)

It should be noted that any acceptance of the Offer and any form of release that may be given as part of that acceptance will:-

- (i) be conditional upon the Contribution Agreement becoming unconditional and being completed in accordance with its terms; and
- (ii) not be physically handed over to the Government of Abu Dhabi unless and until the Contribution Agreement has been completed.

Third Party Recoveries

6. The parties to the Contribution Agreement will co-operate in pursuing claims against third parties who may have injured or otherwise caused loss to the Principal BCCI Companies or the Government of Abu Dhabi and the Majority Shareholders in connection with the affairs of the BCCI Group. Recoveries from all such claims, whether made by either the Principal BCCI Companies or the Government of Abu Dhabi and the Majority Shareholders, will be shared equally. The amount to be shared takes account of the following:-

- (a) the costs incurred by any of the parties in these proceedings or any other proceedings against third parties which have not produced a sufficient recovery to cover such costs; and
- (b) any amounts that have had to be contributed by any of the parties (or in the case of the Government of Abu Dhabi, the Majority Shareholders or the Related Persons) by reason of having become a joined part in those proceedings.

Thus the amount to be shared is the net benefit to the parties as a whole.

7. There are two categories of these claims:-

- (a) those, whether available to the Principal BCCI Companies or the Government of Abu Dhabi and the Majority Shareholders, which will be pursued by the party entitled to bring the claim; and
- (b) others where the claims of Principal BCCI Companies against certain specified third parties are to be assigned to the Government of Abu Dhabi, and thus where the claims of either the Principal BCCI Companies or the Government of Abu Dhabi or the Majority Shareholders will be pursued by them.

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All of these are subject to sharing as indicated in paragraph 6.

8. The specified third parties to whom paragraph 7(b) applies are:-

- (a) the former auditors and certain former solicitors of the Principal BCCI Companies;
- (b) certain named individuals who were formerly responsible for the management of the principal BCCI Companies.

9. The claims that are to be shared do not include claims for the recovery of money lent or guarantee claims or claims of the recovery of the assets of the BCCI Group.

10. In connection with the pursuit of third parties there are obligations of mutual assistance, consultation and co-operation, and subject to what is said below, the parties are to use all reasonable endeavours to maximise the recoveries from these parties. In connection with these issues the following should be noted:-

- (a) No party is under any obligation to co-operate or consult or provide information if it regards it as contrary to its best interests to do so.
- (b) No party is under any obligation to prosecute any proceedings if it regards it as contrary to its best interests to do so, but in any case where this right is exercised the parties shall consider what alternative cause might be taken to maximise the third party recovery in question. This exception does not apply to the claims against the former auditors or the former solicitors assigned to the Government of Abu Dhabi.

Releases

11. Under the Contribution Agreement, the Government of Abu Dhabi, the Majority Shareholders and the Related Persons agree to release all claims against principal BCCI Companies, including any claims in respect

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of sums in excess of U.S. \$2 billion forming part of the private portfolio of one of the Majority Shareholders which was allegedly misappropriated by former officers of the BCCI Group and applied for the benefit of the BCCI Group. The releases of these claims are also covered by the ICIC Agreement which is to be executed at the same time as the Contribution Agreement (see Section D). In return the Principal BCCI Companies will agree to release all claims against the Government of Abu Dhabi, the Majority Shareholders and the Related Persons. In both cases the releases do not include claims to recover amounts arising in the proper course of business as shown in the Principal BCCI Companies' books such as loans, deposits or guarantee liabilities. Upon acceding to the Contribution Agreement the liquidators of a foreign branch ("a Participating Liquidator") will give, and receive the benefit of, the relevant releases referred to above.

12. The claims in respect of which releases are given by the BCCI Companies and their Liquidators, and upon their accession by Participating Liquidators of the branches, includes releases of the refinancing package ("RFP") entered into in June 1991 under which certain loan were to be assigned and the Government of Abu Dhabi issued promissory notes. All claims in respect of the RFP documents (including the Promissory Notes) are to be released.

13. The Government of Abu Dhabi has given an indemnity to the BCCI Companies against the effects of the releases being held to be invalid.

14. The BCCI Companies have given an indemnity to the government of Abu Dhabi, the Majority Shareholders and the Related Persons to whom releases are given against the effects of any of these releases being held to be invalid provided however that this indemnity is limited to the amount (if any) by which the value of the Pool is increased as a result.

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UAE Entities

15. The affairs of certain branches and entities in the United Arab Emirates are the subject of particular provisions of the Contribution Agreement. Pursuant to the UNB Agreement BCCI Holdings will transfer its 40% interest in the United National Bank (formerly BCC (Emirates)) to ADIA (see Section F). Under the UAE Branch Liquidation Agreement (see Section E) a local liquidator will take over responsibility for all recorded liabilities to creditors (including contingent liabilities) of branches of BCCI SA in the United Arab Emirates, which, on current proposals, will be the subject of a separate liquidation. Certain claims of UNB and by the Liquidator of the branches of BCCI SA in the United Arab Emirates, will be admitted in the liquidations of the Principal BCCI Companies at agreed figures subject to setting off claims between the relevant entities in question. The specific arrangements are as follows:-

- (a) ADIA will be admitted in the liquidation of BCCI Overseas in an amount of not less than \$885 million;
- (b) United National Bank will be admitted in the liquidation of BCCI SA for not less than \$6.5 million and of BCCI Overseas for not less than \$264 million;
- (c) the Liquidator of the UAE branches will be admitted in the liquidation of Overseas for not less than \$344 million and of BCCI SA for not less than \$426 million.

The amounts are subject to increase in respect of additional claims or, as mentioned above, reduction in respect of claims against the entity in question.

16. In connection with the UAE Entities the following points should be noted:-

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- (a) For the purpose of the creditors acceptance condition (see paragraph 18(b)) the UAE Entities are to be treated as having accepted the Offer to be made on behalf of the Government of Abu Dhabi and given a release, in respect of the amounts for which they are admitted.
 - (b) to the extent that they may be entitled to recover their indebtedness from an Excluded Branch, they are to prove in the liquidation of such branch and use all reasonable endeavours to pursue that claim, and if successful the Entity in question will give credit in respect of that part of their claim for amounts so recovered against sums to which it may be entitled either in the liquidation of Principal BCCI Companies and as a result of being a Qualifying Creditor under the Offer.
17. The execution of the UAE Branch Liquidation Agreement and the UNB Agreement (if not already executed) is a Condition of the execution of the Contribution Agreement.

Conditions

18. The Contribution Agreement itself, and the releases to be given by the parties or individual creditors to qualify themselves to share in the Government's Contribution, are subject to certain conditions, notably:
- (a) that the Courts of Luxembourg, England and the Cayman Islands approve the Pooling Agreement, the Paying Agency Agreement and the Contribution Agreement and the various other documents to be entered into at the same time as at the Completion of the Contribution Agreement including the ICIC Agreement, the UAE Branches Liquidation Agreement and the releases to be given, and authorise the Liquidators to execute them and to comply with all their terms; and

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(b) that a minimum level of support from qualifying creditors is achieved: it is necessary for creditors whose admitted claims total US\$7 billion (including agreed values attributable to creditors of Excluded Branches whose Liquidators give relevant covenants and releases) to accept the Offer and agree to release the Government of Abu Dhabi, the Majority Shareholders and the Related Persons from any claims as described above, by 30th September 1992 or at the option of the Government of Abu Dhabi, by 30th November 1992.

If either of those conditions is not met, none of the provisions of the Contribution Agreement will take effect. The Government's Contribution will be returned to it and any releases given (including those by individual creditors) will be of no effect.

Standstill

19. Between execution of the Contribution Agreement and its ceasing to have effect or Completion, all parties agree that they will not bring any action in respect of the claims that will be released or assigned to the Government of Abu Dhabi at Completion. No party is able to take any point about any delay caused in this way if the agreement is not completed.

Conduct of the Liquidations

20. The Principal Liquidators are obliged to seek to obtain all directions or orders from the courts to enable them to comply strictly with the terms of the Contribution Agreement, and to resist claims that they are not so authorised. Subject to taking these steps they are not required to act in breach of their legal obligations.



Termination

21. The Government of Abu Dhabi may terminate the Contribution Agreement, and thus be released from any further obligations under it, if any of the Principal BCCI Companies acting on the instructions of or through any of the Principal Liquidators commence proceedings against the Government of Abu Dhabi, the Majority Shareholders or the Related Persons in relation to the affairs of the BCCI Group other than those rights specifically retained ("Relevant Proceedings"). This expressly does not include claims to enforce the agreements.

Law, Jurisdiction and Arbitration

22. The Contribution Agreement is governed by English Law and contains a submission by all parties to the jurisdiction of the English Courts.

23. It includes an Arbitration Clause which can only be invoked by the Government of Abu Dhabi, either by submitting a dispute or requiring other parties to submit a dispute to arbitration. The clause provides for such Arbitration to be conducted under the Rules of the International Chamber of Commerce in Paris before three arbitrators.

Parties

24. The only UAE party is the Government of Abu Dhabi although certain releases and other benefits are afforded to the other Majority Shareholders and the Related Persons. Certain obligations or releases are undertaken or given by the other Majority Shareholders. So far as these obligations are concerned the Government of Abu Dhabi will be entering into the agreement as an authorised agent of the other Majority Shareholders.



SECTION C: THE PAYING AGENCY AGREEMENT

1. In addition to the points mentioned in paragraph 5 of Section B, the other main features of the Paying Agency Agreement are as follows:-
 - (a) Certain limited retentions will be made by the Paying Agent and withheld from distribution to cover particular eventualities under (b) and (c) below.
 - (b) In certain circumstances, all or part of the Government's Contribution may be paid back to the Government of Abu Dhabi (see Paragraph 4 below); in particular, sums will be repaid where any Relevant Proceedings are brought by certain liquidators and/or creditors against the Government of Abu Dhabi, the Majority Shareholders or the Related Persons.
 - (c) Money will also be payable to the Government of Abu Dhabi if there is an amount due as a result of an adjustment to the Government's Contribution arising from a change in liabilities (see Paragraph 3(e) below).
 - (d) If the Contribution Agreement never becomes unconditional, the Government's Contribution will be returned to the Government of Abu Dhabi with all accrued interest.
2. The Paying Agent will distribute the Government's Contribution among creditors as follows:
 - (a) After completion of the Contribution Agreement has taken place, the Paying Agent will distribute the Government's Contribution in instalments among Qualifying Creditors (see Paragraph 5 in Section B above).

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- (b) If creditors become Qualifying Creditors after distributions have already been made from the Contribution Fund, payments will be made to them with the intention, so far as possible, of paying them as much money as they would have received in those earlier distributions. (Such payments are referred to below as "catch-up payments".) However, it may not be possible to pay these creditors this amount if there is no longer sufficient money in the Contribution Fund to do so. The Paying Agent is not obliged to make catch-up payments immediately upon a creditor becoming a Qualifying Creditor and may wait until the next distribution of all Qualifying Creditors from the Contribution Fund to do so (but no payments will be made to other Qualifying Creditors before catch-up payments are made.
 - (c) If a Qualifying Creditor receives the full amount of his claim in the liquidation (whether from the Contribution Fund and/or by way of dividend) he shall not be entitled to receive any more payments from the Contribution Fund.
 - (d) However, a Qualifying Creditor will not be entitled to receive payments from the Contribution Fund in certain circumstances where Relevant Proceedings have been brought as described in Paragraphs 4(c), (d) and (e) below.
3. Although most of the Government's Contribution will be available to make payments to Qualifying Creditors, the Paying Agent will retain some amounts from the Government's Contribution and withhold them from distribution. These retentions are described in (a) to (e) below. For the purpose of making these retentions and the repayments described in Paragraph 4 below, each branch and BCC Gibraltar is treated as having a

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notional share in the Government's Contribution which is calculated by reference to the liabilities of that branch as compared with the total liabilities of the Principal BCCI Companies: this share is referred to below as "the Branch Share". Similarly, each creditor is regarded as having, in effect, a share in the Government's Contribution which is calculated by reference to his claim in the liquidation as compared with the total liabilities of the Principal BCCI Companies: this share is referred to below as the "Creditor Share".

- (a) The Paying Agent is entitled to retain part of the Government's Contribution to provide for the payment of its costs from the Contribution Fund.
- (b) If legal proceedings should be brought against the Paying Agent arising from its administration of the Contribution Fund, the Paying Agent will be entitled to be indemnified from the Contribution Fund and the Paying Agent can retain part of the Government's Contribution to make provision for such an indemnity.
- (c) The Paying Agent will retain an amount representing the Creditor Shares of those Creditors who have not yet given the necessary releases so as to become Qualifying Creditors. (These creditors are referred to below as "eligible creditors"). However, this retention will be released (either at once or in stages) and will be available for distribution among Qualifying Creditors once the Government of Abu Dhabi is satisfied that the eligible creditors (or certain eligible creditors) are not likely to bring Relevant Proceedings. If there is any part of this retention remaining in the Contribution Fund just before the end of the agency period (which is twenty years) it will be distributed among the Qualifying Creditors.

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- (d) The Paying Agent will retain (within certain limits) an amount representing the Branch Shares of Excluded Branches (being branches whose liquidators have not agreed to participate in the proposed Pooling Arrangement). However:
- (i) In the event that the liquidator of an Excluded Branch releases claims he may have against the Government of Abu Dhabi, the Majority Shareholder, and certain connected persons, the rest of his branch's Branch Share will be available for distribution among Qualifying Creditors;
 - (ii) The Branch Shares of each of the other Excluded Branches will be released and will be available for distribution among Qualifying Creditors once the Government of Abu Dhabi is satisfied that the liquidator of that Excluded Branch is not likely to bring Relevant Proceedings. If there is any part of this retention remaining in the Contribution Fund just before the end of the agency period, it will be distributed among the Qualifying Creditors.
- In the case of both (i) and (ii), the Branch Share which is made available for distribution to Qualifying Creditors may have been reduced because repayments have been made to the Government of Abu Dhabi for the reasons described in Paragraph 4(f) or (g) below.
- (e) Adjustments are made to the Government's Contribution after June 1994, and if the Government's Contribution is reduced because liabilities are less than US\$10 billion, the shortfall (up to a maximum reduction of US\$500 million) will be paid back to the Government of Abu Dhabi from the Contribution Fund (see Paragraph 3(b) in Section B above). In order to make provision

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for this potential repayment, the Paying Agent will retain US\$500 million out of the last two payments made to it by the Government of Abu Dhabi (i.e. US\$100 million will be retained from the payment made on 20th June 1993 and US\$400 million will be retained from the payment made on 20th June 1994). This amount will be retained until the Liquidation Certificate as at 30th June 1994 has been issued (see paragraph 4(a) of Section B above) and it is known whether there is any shortfall to be paid back to the Government of Abu Dhabi. After this has been determined and the Paying Agent has made any necessary repayment, the balance of the cash retained for this purpose may be distributed among Qualifying Creditors (although the Paying Agent will continue to retain any sums which it thinks necessary to provide for the possibility that liabilities may decrease in the future).

4. In the circumstances described in this paragraph, all or some of the sums in the Contribution Fund will be paid back to the Government of Abu Dhabi. Once a repayment has fallen due to be made to the Government of Abu Dhabi, the amount of that repayment will be withheld from distribution to Qualifying Creditors.

- (a) If the Contribution Agreement never becomes unconditional or is not completed, the whole amount in the Contribution Fund will be paid back to the Government of Abu Dhabi.
- (b) If the Liquidators of the Principal BCCI Companies (for the purposes of this section referred to as "the Principal Liquidators") fail to comply with their obligations under the Paying Agency Agreement in such a way that it is impossible for the Paying Agent to cause payments to be made to the Qualifying



Creditors, the whole amount remaining in the Contribution Fund will be paid back to the Government of Abu Dhabi.

- (c) If the Principal Liquidators bring Relevant Proceedings, the whole amount remaining in the Contribution Fund will immediately be paid back to the Government of Abu Dhabi.
- (d) If Relevant Proceedings are brought by any of the other branch liquidators who have agreed to take part in the Pooling Arrangements, the Paying Agent will withhold any sums it would otherwise have paid to the Qualifying Creditors of that branch. Those sums will be paid to those Qualifying Creditors if their liquidator's proceedings fail. However, if the liquidator succeeds in his proceedings, no further payments will be made to any creditors of that branch from the Contribution Fund. The Paying Agent will also pay back to the Government of Abu Dhabi the amount of that branch's Branch Share (having made deductions to take account of any money already recovered by the Government of Abu Dhabi in respect of those proceedings from the Pool).
- (e) If Relevant Proceedings are brought by a creditor whose branch liquidator has agreed to participate in the Pooling Arrangements, the Paying Agent will immediately pay back to the Government of Abu Dhabi the amount of his Creditor Share. No further payments will be made to that creditor from the Contribution Fund.
- (f) If Relevant Proceedings are brought by a liquidator of an Excluded Branch, the Paying Agent will immediately pay back to the Government of Abu Dhabi the Branch Share of that branch.
- (g) If Relevant Proceedings are brought by a creditor of an Excluded Branch, the Paying Agent will immediately pay back to the Government of Abu Dhabi the amount of his Creditor Share.

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- (h) If payments have fallen due to the Government of Abu Dhabi under the Contribution Agreement but have not been made, the Government of Abu Dhabi may require payment to be made from the Contribution Fund up to the amount of Contribution Fund then available and, if this is insufficient, from any amounts received thereafter in the Contribution Fund.

In order to avoid double counting, before the Paying Agent pays a Branch Share to the Government of Abu Dhabi (under (d) or (f) above), the Paying Agent will make certain deductions, for example, in respect of

- (i) payments to Qualifying Creditors of that branch or
- (ii) payments to the Government of Abu Dhabi as a result of a creditor of that branch bringing Proceedings.

For the same purpose, if the Paying Agent has to pay a Qualifying Creditors' Creditor Share to the Government of Abu Dhabi (under (e) above), the Paying Agent will first deduct any amount which that creditor has already received from the Contribution Fund. Repayments in respect of any branch (whether because its liquidator or its creditors have brought Relevant Proceedings) will not exceed the Branch Share.

5. There will be a limit on the repayments described above (other than those referred to in Paragraphs 4(a), (b) and (c)), so that the Government of Abu Dhabi is not repaid from the Contribution Fund and/or the Pool more than it has paid by way of the Government's Contribution.

Interest

6. The interest which accumulates on the first two payments made by the Government of Abu Dhabi up to 30th November 1992 will be paid to the Government of Abu Dhabi in any event. After that, (unless the repayments described in Paragraphs 4(a), (b) and (c) have to be made),

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interest on the Government's Contribution will accrue for the benefit of the Contribution Fund and (save to the extent that the Paying Agent has to make the retentions described in Paragraph 3), it will be available for distribution to Qualifying Creditors.

Investment Powers

7. The investment powers of the Paying Agent are severely limited to what is necessary to carry out its function. Deposits are only permitted with first class banks and the accounts held by any bank is limited. .

SECTION D: ICIC AGREEMENTOverall Purpose

1. The background to this agreement is that the Majority Shareholders claim to have tracing or other proprietary and trust claims against ICIC Overseas, ICIC Investments Ltd ("ICIC Investments") and other companies in the ICIC Group, as well as the BCCI companies arising from the misappropriation and misapplication of sums deposited with ICIC Overseas by the Majority Shareholders which is understood to have amounted in total to some \$2.2 billion. Pursuant to the ICIC Agreement it is intended that the ICIC Group will be "ring-fenced", the assets of the companies pooled and the companies liquidated. This note defines in general terms how this is to be achieved. The key terms of the ICIC Agreement include the following:-

- (a) To provide releases from the Majority Shareholders for the BCCI Group and ICIC Overseas from the proprietary and trust claims.
- (b) To provide covenants from the Majority Shareholders not to sue other members of the ICIC Group which, when they adhere to the arrangements as mentioned below, convert into full releases.
- (c) To provide releases of the ICIC Group from certain claims by the BCCI companies.
- (d) To provide releases by the ICIC Group in favour of the Majority Shareholders and the BCCI companies in respect of certain claims.
- (e) To provide for the orderly termination of the activities of the ICIC Group including the liquidation of ICIC Overseas, ICIC Investments and ICIC Holdings Ltd ("ICIC Holdings").

Releases

2. The Majority Shareholders will release BCCI, including for this purpose all participating branches under the Contribution Agreement, and ICIC Overseas from any claims which they may have in respect of:-

- (a) various tracing and other proprietary claims (referred to in the agreement as "Portfolio Claims") to any money, funds or assets which belonged at any time to the Majority Shareholders which were deposited with any member of the ICIC Group (which for the purposes of this memorandum means ICIC Apex Holdings Ltd ("Apex"), ICIC Investments, ICIC Holdings and ICIC Overseas);
- (b) claims for damages arising by breach of contract, tort, fraud or breach of trust or in any other manner arising out of the misappropriation or application of any of those funds (referred to in the agreement as "Portfolio Related Claims"); and
- (c) claims against anybody where the funds or assets the subject matter of the claim were recorded as an asset of a member of the BCCI Group or ICIC Overseas at 5th July 1991 (referred to in the agreement as "Excluded Portfolio Claims") are the subject of special provisions.

Covenants Not to Sue

3. The Majority Shareholders will give covenants not to sue Apex, Investments or Holdings for claims for misappropriation of the Majority Shareholders' funds (Portfolio Related Claims), but no release or covenant not to sue is given in respect of the Portfolio Claims i.e. the right to trace or recover any of the funds which those companies may hold other than any such assets that are referred to in paragraph 2(c) above. If they have assets which can still be traced from these funds, the Majority Shareholders can claim them.

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Pursuit of Portfolio Claims

4. Subject to the major restriction of the right to recover set out in paragraphs 2 and 3, the Majority Shareholders retain the right to pursue Portfolio Claims against third parties and have the right, if appropriate, to require the members of the BCCI Group and ICIC Group (at the Majority Shareholders' expense) to pursue those claims on their behalf. The Majority Shareholders are also entitled to have these claims assigned to them, and to commence proceedings in the name of the BCCI or ICIC company in question.

Indemnity for Claims by Third Party

5. If the Majority Shareholders pursue claims against a third party in respect of Portfolio Funds and that third party in turn takes proceedings against the BCCI or ICIC Group in relation to the matter in question, the Majority Shareholders must indemnify BCCI or ICIC Group against the cost of meeting the third party claims up to the amount the Majority Shareholders recover from that third party.

Claims prior to Adherence

6. If any of Apex, ICIC Holdings or ICIC Investments sue the BCCI Group before they adhere to the Agreement, the Majority Shareholders will be free to sue that member of the ICIC Group, but must then return to the BCCI Group any part of what they recover which they would not have been entitled to recover by direct action against the ICIC company in question taking account of the covenants not to sue referred to in paragraph 3. If any of Apex, ICIC Holdings or ICIC Investments sue the Majority Shareholders before they give releases, then the Majority Shareholders can sue them.

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BCCI and ICIC Releases

7. There are interlocking mutual covenants between the BCCI companies on the one hand, and the members of the ICIC Group on the other, and between the members of the ICIC Group, so that with the exception of the payments specifically provided for in the agreement, none of these companies will bring any claims of any sort against each other. Any claims by members of the ICIC Group against the BCCI Companies in respect of deposits are however retained and are not released. There is also a provision which precludes the members of the ICIC Group from bringing any claims against third parties, without the approval of the Majority Shareholders, once that Company's Accepted Legitimate Creditors (see below) have been paid off in full. Prior to that time the members of the ICIC Group may only bring such claim after discussion with the Majority Shareholders and the BCCI Principal Liquidators. The object of this provision is to try to minimise the possibility of claims against BCCI because any member of the ICIC Group takes action against its own creditors or alleged creditors and generally to secure that the liquidation of ICIC can occur with the minimum of disruption and inconvenience to the liquidation of BCCI and to the Majority Shareholders.

Loans by and to the Majority Shareholders and Related Persons

8. In addition to the covenants and releases, there is a related provision under which ICIC Overseas agrees to assign to the Majority Shareholders all claims which that company may have against any of the Majority Shareholders or Related Persons (as defined in the Contribution Agreement) in respect of loans. As a related part of this arrangement, it has been agreed that the Majority Shareholders shall be entitled to



prove in the liquidation of ICIC Overseas and to be treated as Accepted Legitimate Creditors in respect of their own claims as depositors, but up to a limit of \$320,000. This account is to cover one identified account shown with a balance of approximately \$300,000.

Conditions and adherence

9. The arrangements are, with limited exceptions, conditional on completion of the Contribution Agreement. Additionally, the provisions as they affect members of the ICIC Group other than ICIC Overseas, are conditional on all of Apex, ICIC Investments and ICIC Holdings agreeing to adhere to the agreement, passing resolutions to wind up and the like.

Pooling and Subordination

10. In order to facilitate the solvent liquidation of the ICIC companies, a pooling and subordination regime is to be adopted. Under this, the Accepted Legitimate Creditors of each of the companies would be identified. Broadly these are the creditors who have established their claims as genuine claims (having consulted the BCCI Liquidators, because of their interest in the BCCI subordinated claim referred to below).

Payments in Liquidation

11. The pooling arrangement envisages that each members of the ICIC Group would out of the proceeds of realisation of its own assets, pay its own Accepted Legitimate Creditors. Any balance left over at that stage from any of the companies would be used to pay the accepted legitimate creditors of the other companies. If at that stage there is still a balance, this will be paid to BCCI SA in satisfaction (in whole or in part) of the net claim (if any) due from the members of the ICIC

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Group as a whole to the BCCI companies. If after that there is any surplus it would be paid to the Majority Shareholders, the justification for this being that they have released claims against all these companies.

Auditors

12. The agreement provides for the assignment by ICIC Overseas of all its claims against its auditors, and requires ICIC Overseas to assist in support of such claims, including by providing information. Any sums which are recovered will be divided in equal shares between ICIC Overseas and the Majority Shareholders. Furthermore steps are to be taken so that Price Waterhouse cease to be the auditors of any member of the ICIC Group if the Majority Shareholders so request.

Access to information and mutual assistance

13. Each member of the ICIC Group undertakes to keep safe all books and records and to use its reasonable endeavours to procure reasonable access to the same for the parties to enable them to pursue proper claims. All recipients of access have to execute a confidentiality undertaking. There is a provision under which none of the Parties will have to produce information if it is against their own best interests to do so.

Confidentiality of Papers

14. The liquidators of the members of the ICIC Group will be required to keep confidential all of the papers belonging to the company they are liquidating. If an application is made to a court for delivery up of any documents, then notice will be given to the Majority Shareholders who will then have an opportunity to oppose the application on behalf of the liquidator. However, if a final and binding court order is made requiring delivery of any document to a third party, it will be delivered.



Standstill

15. There is a provision in the agreement providing for a stand-still in the period between the entry into force of the agreement and the satisfaction of the conditions under which no claims which are to be released or assigned will be pursued.

Status of ICIC

16. Until the contribution agreement has become unconditional and completed the parties shall use reasonable endeavours to maintain ICIC Overseas in provisional liquidation.

Co-operation and Sharing

17. Where the Majority Shareholders consider they have Portfolio or Portfolio Related Claims against someone, or where the Principal Liquidators have claims against a person against whom they believe the Majority Shareholders may have such a Portfolio or Portfolio Related Claim, there is provision for consultation in order to maximise the recoveries. If both parties agree, there is provision for sharing the total net proceeds of the recoveries against that defendant.

Rescission

18. If the Contribution Agreement is terminated because proceedings are brought by any of the Liquidators of the principal BCCI Companies against the Majority Shareholders or Related Persons in respect of Relevant Proceedings, then the provisions of the ICIC Agreement shall cease to be of effect and the parties are released from covenants not to sue and obliged to execute such documents that may be required so that each party is placed in the same position as if the agreement had not been entered into.



SECTION E: UAE BRANCH LIQUIDATION AGREEMENT

Introduction

1. As part of the overall arrangements the eight UAE Branches will be put into a self-contained liquidation. Assets and recorded liabilities (including contingent liabilities) that are attributable to the businesses of the eight branches will be taken over by a UAE Liquidator.
2. In parallel with the UAE Liquidation, the Government of Abu Dhabi will probably establish one or more compensation schemes, under which funds will be provided to increase the pool of assets available to the UAE Liquidator. Depositor creditors in the UAE are likely to receive priority treatment under any such compensation scheme. Other creditors will receive a dividend in the UAE Liquidation but may not be eligible for the compensation schemes.
3. A substantial element of the UAE Assets consists of claims against other BCCI entities, or notional claims against the head office or other branches of BCCI SA. The UAE Liquidator will be permitted to submit these claims in the Pool Liquidations. On execution of the Agreement minimum gross claims totalling US\$770,000,000 will be acknowledged (see paragraph 15 of Section B above). Further claims will be admitted in the Pool Liquidations if proved in the usual way. Claims from the principal BCCI companies against the UAE Branches will be dealt with by way of set-off against the UAE claims. The UAE Liquidator will not join the Pooling Agreement and will specifically agree that he will not enter into a Branch Participation Agreement.

UAE Liquidator

4. The UAE Liquidator has not yet been appointed. A copy of the appointment order will be annexed to the UAE Liquidation Agreement.



Conditionality

5. The UAE Liquidation Agreement will be conditional on the completion of the Contribution Agreement and will come into effect immediately following that completion. The UAE Liquidation will itself start as soon as practicable, but subject to the standstill provisions mentioned in paragraph 8 below.

Liquidation

6. Although the UAE Liquidator will be bound by certain local rules and duties, many of his powers, and the rules to be followed in realising and distributing assets of the UAE Branches, will be set out in principle in the UAE Liquidation Agreement.

The main characteristics of the liquidation will be as follows:-

(a) Assets

The assets available to the UAE Liquidator will be all assets of BCCI SA exclusively or principally used by the UAE Branches, including amounts due to the Branches from third parties or other members of the BCCI Group and amounts treated as due from other branches of BCCI SA. Central Office assets and Treasury Portfolio Management Division ("TPMD") assets (if any) located in the UAE are excluded.

(b) Liabilities

The UAE Liquidator will have responsibility for payment of liabilities of the UAE Branches, whether actual or contingent, if and only if they are properly recorded in the official books, records, documents or data of the UAE Branches. Subject to paragraph 7 below, he will not be responsible for Central Office or TPMD liabilities or for any other liabilities. Additionally, he will not be responsible for UAE Branch liabilities to ADIA or UNB.

(c) Indemnities

To reinforce these divisions, various indemnities are given by the Abu Dhabi Government, the UAE Liquidator and the principal BCCI companies, as follows:

- (i) The UAE Liquidator will indemnify the principal BCCI companies against the whole of any payment made by them in good faith in respect of a UAE recorded liability that should properly have been the subject of a dividend in the UAE Liquidation.
- (ii) The Liquidators of the Principal BCCI Companies will indemnify the UAE Liquidator in respect of any payments that he is required to make because of UAE law, or otherwise innocently makes, in respect of unrecorded UAE Branch liabilities, Central Office liabilities, TPMD liabilities or other BCCI liabilities. All of these are termed "Excluded Liabilities". However, the indemnity to the UAE Liquidator will not be a 100% reimbursement of the payments for Excluded Liability claims borne by the UAE Liquidator; it will be at whatever level of recovery the creditor would have received if he had claimed in the Pool Liquidations (taking into account amounts received in other local liquidations and the principle of hotch-pot).
- (iii) The Abu Dhabi Government will indemnify BCCI for any losses it suffers as a result of certain acts or omissions by the UAE liquidator. The indemnity will cover, for example, losses incurred because of an action taken by the UAE Liquidator that has the effect of binding SA as against third parties.



(d) Hotch-pot

The principle of hotch-pot will be applied to any dividend payable to a creditor out of the Pool by the Principal Companies or the UAE Liquidation. This will mean that where, for example, a creditor receives a dividend from the UAE Liquidation or liquidation of an Excluded Branch and then seeks to recover the balance of his claim from the Principal Companies, that creditor will not receive any dividend unless and until all other Pool creditors have also received a dividend at the same level as the amount already received by him (50%). The UAE Liquidator has agreed to make maximum practicable recovery of each of his claims against the Pool in the liquidation of an Excluded branch, and to deduct any payment or dividend received there from the dividend sought from the Pool in respect of that claim.

Central Office Expenses

7. The UAE Receiver appointed in 1991 to regulate the operation of the UAE Branches has paid certain Central Office expenses incurred since 5th July 1991 out of the UAE assets. The amounts paid currently total in excess of US\$8 million. Some such expenses will continue to be paid. In addition, certain former Central Office employees have obtained attachment orders under UAE law over assets of the UAE Branches. These orders are to secure payment of sums due to the former Central Office employees following termination of their contracts. Under UAE law, these termination payments are significantly higher than the actual payments made to the employees when their employment contracts were terminated in November 1991 and the employees are substantially treated as preferred creditors. The Courts of Abu Dhabi are currently processing further similar claims.



8. The first US\$4,848,000 of such payments will be reimbursed 100% by the Liquidators of the principal BCCI companies to the UAE Liquidator on completion of the UAE Liquidation Agreement. Any further payments made in respect of Central Office/TPMD Liabilities:

- (a) before signing the Agreement; or
- (b) after signing the Agreement, if made at the request of the Pool Liquidators; or
- (c) after signing the Agreement, if made because UAE law so requires will be treated as simple claims in the Pool Liquidations.

BCCI Pool Claims against UAE Branches

9. Amounts properly recorded in the UAE Branch books as due to BCCI Overseas, CFC or BCCI Gibraltar and amounts properly recorded in the books of the UAE Branches as due to other branches of SA will be treated as liabilities to the BCCI companies. No claim will be made in the UAE Liquidation in respect of these liabilities. Instead they will be dealt with by setting them off against the claims of the UAE Liquidator in the Pool Liquidations.

Mirroring of Contribution Agreement

10. Many of the general provisions in the UAE Liquidation Agreement mirror those in the Contribution Agreement. In particular, all parties to the Agreement agree not to pursue claims against each other between signing and completion; the UAE Liquidator agrees to release the majority shareholders in the same terms as the releases required by the Contribution Agreement; and undertakings are given by all parties to keep true and correct records. Many of these obligations are private matters between the UAE Liquidator and the Government of Abu Dhabi. It is agreed that no breach of the UAE Liquidator's obligations to the



Government of Abu Dhabi will per se constitute a breach of the Agreement by the BCCI Liquidators or companies or will adversely affect the enforceability of the rest of the Agreement.

Parties

11. Although the UAE Liquidation relates principally to branches of SA, the principal BCCI companies and their liquidators will all be parties to the UAE Liquidation Agreement for two reasons:-

- (a) the Agreement deals with the arrangements relating to claims by the UAE Liquidator and the Abu Dhabi Government in the Pool Liquidations; and
- (b) indemnities given by and to the BCCI Principal Companies, the Abu Dhabi Government and the UAE Liquidator are also contained in the Agreement.



SECTION F: THE UNB AGREEMENT

1. Under the UNB Agreement, and its subsidiary documents, Holdings agrees to transfer to its 40% interest in United National Bank to ADIA for a nominal consideration.
2. Under the Agreement, a covenant is given that since 5th July the shares have not been transferred and the Liquidators confirm that they are not aware of an impediments on their right to transfer.
3. There are a number of other outstanding issues between the BCCI Group and UNB relating to this separation, including the consequences on a management contract that was in place, a potential software licence and various other matters. These remain under discussion between UNB (which is not controlled by the Abu Dhabi authorities) and the Liquidators.



SECTION G: THE LITIGATION AGREEMENT

1. This agreement was signed on 20th February and is intended to have legal effect.
2. Under the Contribution Agreement all claims against Price Waterhouse, the auditors of BCCI and claims by BCCI Overseas against Ernst and Whinney in respect of their part in the 1985 and 1986 audits (together called "the Audit Claims"), are to be assigned to the Government of Abu Dhabi at Completion of the Contribution Agreement. As certain limitation periods may expire in the period prior to Completion, this agreement is to regulate the handling of the audit claims in the interim.
3. Under the agreement the parties will do all things as may be necessary to preserve and if necessary to prosecute the audit claims. There are provisions for the exchange of information, including the taking of necessary steps where the provision of information is restricted for example by injunction.
4. If it appears that any limitation period is about to expire the principal BCCI companies and their liquidators ("the Principal Parties") will take such action as the Government of Abu Dhabi may require to commence proceedings, subject always to any necessary consents having been obtained. Thereafter such steps will be taken in those proceedings as the Government of Abu Dhabi may require.
5. The control of the proceedings the subject of the agreement will be retained in the hands of legal advisers selected by the Principal Parties.

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6. Subject to the Contribution Agreement being completed the costs of the proceedings so far incurred will be reimbursed by the Government of Abu Dhabi. If the Contribution Agreement is not signed by 30th June 1992 or if signed, is not completed, then the agreement shall cease to have any effect and the Government of Abu Dhabi shall be entitled to the reimbursement of its costs from the Principal Parties.

7. No offer of settlement may be accepted by the Principal Parties other than with the consent of the Government of Abu Dhabi. Subject to that any offers will be the subject of discussion between the parties.

8. The Principal Parties are under an obligation to use their best endeavours to get any liquidator of Holdings once appointed to agree to be bound by this agreement.

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SECTION H: THE ANCILLARY DOCUMENTS

1. The Ancillary Documents are listed in the Schedule to this appendix. The largest number of these relate to the Contribution Agreement, although some similar documents are required under some of the other agreements.
2. Most of the Ancillary documents required under the Contribution Agreement are separate documents that are calculated to give effect to the releases which are agreed to be given in that agreement. This applies to those listed under paragraph A.1 and A.3 of the Schedule.
3. The majority of the release documents, being all those referred to in paragraph A.1 of the Schedule, relate to the Refinancing Package. There were a large number of documents in that transaction with a variety of parties and the Government of Abu Dhabi wish to have a separate release for each of the underlying agreements and other documents. A number of the underlying documents were side letters of various kinds, either amongst the parties or in some cases with outsiders and some of the documents are to indicate that such letters are of no further effect.
4. The deed of Assignment referred to in paragraph A.2 of the Schedule is the document that gives effect to the assignment of the Rights against Specified Third Parties - see paragraph 7(b) and 8 of Section B.
5. The Liquidation Certificate (Paragraph A.4 of the Schedule) is the form of the Certificate which will be produced by the Principal Liquidators as at 30th June 1994 and each year thereafter, and which after it has been agreed or settled by arbitration, will be the basis for the adjustment of the Government's Contribution under the Contribution Agreement.

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6. The Accession Agreement (Paragraph A.5 of the Schedule) is the document by which a branch liquidator accedes to the Contribution Agreement. At the same time he will have entered into a Branch Participation Agreement under the Pooling Agreement and will then be a Participating Liquidator under the terms of the Contribution Agreement and the Paying Agency Agreement. He will also be required to execute a Deed of Release in connection with the ICIC Agreement.
6. The Offer Letter (Paragraph A.6 of the Schedule) is the formal document under which the Offer will be made to the Creditors who may be able to accept the Government of Abu Dhabi's offer. Apart from dealing with formal matters it will cover practical issues.
7. The disclosure letter (Paragraph A.11 of the Schedule) makes certain disclosures against the warranty by the Principal Companies and the Principal Liquidators about the rights under the RFP documents and the claims that are released or assigned.
8. The appointments referred to in paragraphs A.7 to A.10 of the Schedule relate simply to formal matters.
9. The Liquidator's Covenant, referred to in paragraph B1 of the Schedule is the document under which a Branch Liquidator of an Excluded Branch will agree not to sue the Government of Abu Dhabi, the Majority Shareholders or the Related Persons and give certain releases. This will have certain consequences under the Paying Agency Agreement and will also allow 70% of the notional amount of the Creditors of the branch to be counted towards the Creditor Acceptance Condition.
10. The UAE and UNB Software Licences (see paragraphs E.3 and F.2 of the Schedule) are the licenses that will be granted by BCCI SA permitting the UAE Liquidator or UNB as the case may be, continue to use

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the software of the computer systems in use in those organisations,
which belongs to BCCI SA.

11. The UNB Separation Agreement (paragraph F.1 of the Schedule) is an agreement which is expected to deal with a number of matters which are not yet resolved between the BCCI Companies and UNB.

12. The other documents are similar to those described above in relation to the Contribution Agreement.

13. It should be noted that these documents have not yet been finally agreed between the parties to them.



Schedule

("The Ancillary Documents")

A. CONTRIBUTION AGREEMENT

1. RFP Release Documents:-

- 1.1 Deed of Release and Rescission relating to Loan Assignment Agreement No. 1 (No. A97516050) between SA, Financial Portfolio (Cayman) Limited ("Company A") and the Government.
- 1.2 Deed of Release and Rescission relating to Loan Assignment Agreement No. 1 (No. A9751630) between Overseas, Company A and the Government.
- 1.3 Deed of Release and Rescission relating to Loan Assignment Agreement No. 2 (No. A97516082) between SA, Financial Measures (Cayman) Limited ("Company A1") and the Government.
- 1.4 Deed of and Release and Rescission relating to Loan Assignment Agreement No. 2 (No. A97516083) between overseas, Company A1 and the Government.
- 1.5 Deed of Release and Rescission relating to Loan Assignment Agreement No. 3 (No. A97516049) and Credit Agreement No. 2 (No. A97516060) between SA, Financial Controls (Cayman) Limited ("Company B") and the Government.
- 1.6 Deed of Release and Rescission relating to Loan Assignment Agreement No. 3 (No. A97516003) and Credit Agreement No. 2 (No. A97516009) between Overseas, Company B and the Government.
- 1.7 Release and Discharge of promissory notes relating to Loan Assignment Agreement No. 1 (No. A97516050) between SA, Company A and the Government.

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- 1.8 Release and Discharge of promissory notes relating to Loan Assignment Agreement No. 1 (No. A9751630) between overseas, Company A and the Government.
- 1.9 Release and Discharge of promissory notes relating to Loan Assignment Agreement No. 2 (No. A97S160S2) between SA, Company A1 and the Government.
- 1.10 Release and Discharge of promissory notes relating to Loan Assignment Agreement No. 2 (No. A97S160S3) between overseas, Company A1 and the Government.
- 1.11 Release and Discharge of Guarantee (No. A97S16059) relating to Loan Assignment Agreement No. 3 between SA, Company B and the Government.
- 1.12 Release and Discharge of Guarantee (No. A97516005) relating to Loan Assignment Agreement No. 3 between Overseas, Company B and the Government.
- 1.13 Deed of Release and Rescission of the Subscription Agreement dated 7th June, 1991 (and the Subscription Agreement dated 22nd May, 1991) between CFC and the Government.
- 1.14 Termination and Release Agreement relating to the Registration and Paying Agency Agreement between ADIA, the Government and Holdings.
- 1.15 Letter relating to side Letter dated 7th June, 1991 from SA to the Government, Companies A, A1 and B.
- 1.16 Letter relating to the letter dated 7th June, 1991 from Overseas to the Government, Companies A, A1 and B.
- 1.17 Letter relating to the letter dated 22nd May, 1991 from Holdings to the Government relating to Loan Assignment Agreements Nos. 1.

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- 1.18 Letters extending to 30th November, 1992 the Assignment Date referred to in the Loan Assignment Agreements mentioned at 1.1 - 1.6 above between parties thereto mentioned.
- 1.19 Letter from CFC and the CFC Liquidators confirming the rescission of Board Resolution of 30th May 1991 relating to Preference Shares.
- 1.20 Letters from Companies A and A1 terminating appointment of The Law Debenture Trust Corporation p.l.c. as process agent.
- 1.21 Letter as to no future reliance on the Waiver dated 7th June, 1991 signed by H.H. Khalifa bin Zayed al-Nahyan.
- 1.22 Letter from Holdings, S.A. and Overseas to the Government as to no future reliance on the letter dated 21st March, 1991 from H.E. Habroush to the Bank of England.
2. Deed of Assignment between (1) Holdings, (2) SA, (3) Overseas, (4) CFC and (5) the Government.
3. Deeds of Release and Waiver to be made (a) between (1) Holdings, (2) SA, (3) Overseas, (4) CFC, (5) the Holdings Liquidators, (6) the Luxembourg Liquidators, (7) the SA Liquidators, (8) the Overseas Liquidators and (9) the CFC Liquidators in favour of the Government, the Majority Shareholders and the Related Persons and (b) vice versa.
4. Liquidation Certificate
 - relating to Realisations/Liabilities adjustments.
5. Accession Agreement between (1) the [Principal] Liquidators and the Acceeding Parties.
6. Agreed Form Offer Letter from the Liquidators of Holdings, SA, Overseas and CFC to creditors made on behalf of the Government.
7. Appointment of Notice Agent.

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8. Appointment of Process Agent.
9. Appointment of Notice Agent for RFP Release Documents.
10. Appointment of Process Agent for RFP Release Documents.
11. Disclosure Letter pursuant to clause 8(C) of the Contribution Agreement.

B. PAYING AGENCY AGREEMENT

1. Liquidator's Covenant to be made by [Principal Company], acting through its branch, business and operation in [jurisdiction] ("the Branch"), by its liquidators and [] and [] ("the Liquidators") as liquidators of [Principal Company] appointed as such by the [] Court of [jurisdiction].

ICIC

1. Documents as at A2, 3, 5, 7 and 8 mutatis mutandis

E. UAE

1. Two sets of documents as at A1.1, 1.3, 1.5, 1.7, 1.9, 1.11, 1.15, 1.21 and 1.22 to be entered into by the UAE liquidator of SA (one set to be conditional for execution on the execution of any UAE Liquidation Agreement and on set to be unconditional for execution on completion of any UAE Liquidation Agreement) mutatis mutandis
2. Documents as at A2, 3, 7 and 8 mutatis mutandis
3. UAE Software Licence

F. UNB

1. Separation Agreement between (1) SA and (2) UNB.
2. UNB Software Licence

APPENDIX 4

ESTIMATED FINANCIAL POSITION

1 Introduction

- 1.1 Set out in this Appendix is the estimated financial position of the principal BCCI Companies as at 30 June 1991 and a comparison of this position with that shown in the last audited BCCI Group financial statements at 31 December 1989. The estimated financial position reflects the reduction of assets to their estimated net realisable value and the adjustments to the book figure of liabilities to the estimated total liabilities on liquidation. The Liquidators would stress the uncertainties in respect of the financial information referred to in the Report and that the estimates for liabilities are particularly subject to a high degree of uncertainty.
- 1.2 The date of 30 June 1991 has been selected (rather than the date of winding up) because this is the latest date for which monthly branch returns are available from the books of the BCCI Group. It is also very close to 5 July 1991 (the date by reference to which liabilities are calculated under the Contribution Agreement and the date of the regulatory authorities' intervention in the BCCI Group).

2 Change in financial position from 31 December 1989 to 30 June 1991

- 2.1 This Appendix includes a comparison of the financial position of the BCCI Group as disclosed in the last audited accounts at 31 December

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1989, and the book figures of the assets and liabilities of the principal BCCI Companies as at 30 June 1991 based on the underlying accounting records (and in particular unaudited branch returns). In a number of instances returns for 30 June 1991 are not available and earlier returns have therefore been incorporated. The comparison summarised below includes an adjustment for those assets and liabilities as at 30 June 1991 which relate to subsidiaries and affiliates which are excluded from the Pooling Agreements.

	Total assets US\$m	Total liabilities US\$m
BCCI Group audited financial information at 31 December 1989	<u>23,518</u>	<u>22,444</u>
 BCCI Group book figures (unaudited and unadjusted) as at 30 June 1991	 16,984	 17,188
 Less: Book figures for excluded subsidiaries and affiliates as at 30 June 1991	 <u>(5,710)</u>	 <u>(5,929)</u>
 Principal BCCI Companies book figures at 30 June 1991	 <u>11,274</u>	 <u>11,259</u>

- 2.2 The information shown at 30 June 1991, is based on the BCCI Group's underlying records. As can be seen from the adjustments described



below they exclude appropriate loan provisions and appear to give no recognition to asset movements restricted by exchange controls.

- 2.3 The last published audited financial information in respect of the BCCI Group at 31 December 1989 showed Group assets of US\$23,518 million and Group liabilities of US\$22,444 million with shareholders' capital of US\$1,073 million. The book figures as at 30 June 1991, show that BCCI Group assets had decreased to US\$16,984 million and Group liabilities had decreased to US\$17,188 million.
- 2.4 The accounting records in Abu Dhabi would appear to indicate that substantial losses were incurred during the eighteen month period to 30 June 1991. These losses largely eliminated the US\$1,073 million of shareholders' capital as at 31 December 1989 and the additional US\$400 million of capital injected into the Group by the Majority Shareholders during the period ended 30 June 1991.
- 2.5 The reduction in the BCCI Group assets and liabilities between 31 December 1989 and 30 June 1991 would appear to have arisen principally from the losses incurred and the substantial fall in deposits held from US\$18,800 million to US\$13,200 million.
- 2.6 The consequent reduction in liquidity is reflected in the reduction in placements with correspondent banks and holdings of other liquid investments which fell in the same period from US\$12,000 million.



3 Estimated financial position of the principal BCCI Companies as at 30 June 1991

- 3.1 Based upon the records available the estimated net realisable value of assets of the principal BCCI Companies has been assessed at US\$1,409 million and the estimated liabilities on liquidation at US\$9,935 million respectively. This assessment may be summarised as follows:

	Total assets US\$m	Total liabilities US\$m
Principal BCCI Companies book figures as at 30 June 1991	11,274	11,259
Adjustments to assets and liabilities (see below)	<u>(9,865)</u>	<u>(1,324)</u>
Estimated realisable value of assets and estimated liabilities on liquidation	<u>1,409</u>	<u>9,935</u>

- 3.2 The estimated outcome shown above should not be treated as giving any firm indication of an estimated return to creditors. It represents a base position which will change whether or not the Majority Shareholder Agreements and the Pooling Agreements are implemented for the reasons given in Paragraphs 14.2 et seq. of the Report.

4 Assets

- 4.1 The reduction in the book figures of assets to estimated realisable value is as follows:

	US\$ million
Principal BCCI Companies book figures at 30 June 1991	<u>11,274</u>
Estimated adjustments:	
Set off	(1,908)
Loan provisions and write down of accrued interest	(6,244)
Overheads and expenses to December 1991	(200)
Estimated overheads and expenses from December 1991	(239)
Preferential creditors	(200)
Write down of balances blocked or due from insolvent banking institutions	(316)
Write down of fixed assets and investments in securities	(231)
Estimated assets of Excluded Branches	<u>(527)</u>
	<u>(9,865)</u>
Estimated realisable value of assets	<u>1,409</u>

- 4.2 The reduction in assets in respect of set-off of US\$1,908 million is matched by a corresponding decrease in the estimated liabilities (section 5 below).



- 4.3 The potential to set off arises where claimants on the principal BCCI Companies hold assets of the principal BCCI Companies. The estimate includes approximately US\$1,000 million of assets held by brokers under repurchase agreements. Whilst all the claims to set off will be subject to full legal challenge where appropriate, the adjustment takes account of the difficulties anticipated in the various jurisdictions involved.
- 4.4 The loan provision of US\$6,244 million is based on the identification of non performing loans and related accrued interest. Many of these were well known to BCCI management prior to 5 July 1991.
- 4.5 The estimates for overheads and expenses are reached by aggregating costs actually incurred by the Liquidators, the Luxembourg liquidators and the Overseas liquidators, with estimates of costs in relation to branches not under direct central control. The estimates for those branches have not been confirmed by the branches concerned. Overheads and expenses include staff costs, security costs, rent, insurance, other establishment costs and operating expenses such as interest payable. Overheads and expenses also include the costs of liquidation comprising liquidators' remuneration, legal fees and other professional fees. For the period from 1 December 1991 overheads and expenses have been estimated at US\$239 million. In the absence of confirmation from the various branches such provision can only be regarded as indicative.
- 4.6 An amount of US\$200 million for preferential creditors has been included in arriving at the estimated realisable value of assets. Whether creditors have preferential claims may depend on the local applicable laws of individual jurisdictions in which the operations of BCCI SA and BCCI Overseas were conducted.



- 4.7 Other adjustments to the various categories of assets have been made to arrive at the estimated realisable value of assets as shown in the table. Among these adjustments is an amount of US\$527 million in respect of the book value of assets of branches of BCCI SA and BCCI Overseas which are not expected to participate in the Pooling Agreements ("Excluded Branches").

5 Liabilities

- 5.1 The adjustments to the book figures for liabilities are as follows:

	US\$ million
Principal BCCI Companies book figures at 30 June 1991	<u>11,259</u>
Estimated adjustments:	
Set off	(1,908)
Amounts payable to BCCI subsidiaries and affiliates	942
Unrecorded deposits	600
Contingent liabilities	1,126
Write off of CFC liabilities	(22)
Preferential creditors	(200)
Write off of BCCI Holdings capital loan notes	(462)
Estimated liabilities of Excluded Branches	<u>(1,400)</u>
	<u>(1,324)</u>
Estimated liabilities on liquidation	<u>9,935</u>

- 5.2 The adjustment in respect of set off is described in Paragraph 4.3 above.

- 5.3 The estimated net amounts due from the principal BCCI Companies of US\$942 million to subsidiaries and affiliates excluded from the Pooling Agreements have been included in liabilities ranking pari passu with other creditors of the principal BCCI Companies. The possible participation of BCC Gibraltar in the Pooling Agreements (referred to in Paragraph 8.1.6 of the Report) is not expected to have a significant effect.
- 5.4 Unrecorded deposits of US\$600 million are the estimated level of deposits placed with the principal BCCI Companies which may not be included in the book figures for liabilities at 30 June 1991. Until claims are received the level of these unrecorded deposits will remain uncertain.
- 5.5 Contingent liabilities are particularly difficult to estimate. They reflect problems arising from the nature of the international financial and banking transactions undertaken by the BCCI Group. Contingent liabilities arising from trading activities not included in the book figures have been provided at US\$1.126 million. They exclude the potential claims by the Majority Shareholders referred to in Paragraph 15.4 of the Report.
- 5.6 Excluded from liabilities are liabilities amounting to US\$1,400 million attributable to branches which are not expected to participate in the Pooling Agreements. Creditors whose claims arise from dealings with these branches would nevertheless be eligible to be admitted as creditors in the liquidation of the principal BCCI Companies in Luxembourg and the Cayman Islands. It is anticipated that such creditors will not participate in any dividends paid in the liquidations of the principal BCCI Companies in Luxembourg and the Cayman Islands, because it is anticipated, on the basis of information currently available, that payments or distributions made to such creditors under local liquidations or other arrangements will exceed the level of any dividend in the liquidations of the principal BCCI Companies in Luxembourg and the Cayman Islands.

Strictly Private & Confidential

BANK OF CREDIT AND COMMERCE INTERNATIONAL S.A.

**Report to the members of the
BCCI SA Creditors' Committee**

1st May, 1992

Note: This Report is restricted to members of the UK Creditors' Committee of BCCI SA and their solicitors and must not be made available to any other person without the prior written consent of Norton Rose. The Report has been supplemented by verbal advice and represents part only of the advice made available to the UK Creditors' Committee.

Norton Rose
London

Date 1st May, 1992

To: The Members of the Bank of Credit and Commerce International SA Creditors' Committee and their solicitors.

Introduction

- 1 This Report is prepared by Norton Rose for the BCCI SA Creditors' Committee pursuant to Orders of the Chancery Division of the High Court of Justice, London.
- 2 The Report summarises the claims against the majority shareholders of the BCCI Group, the respective merits of such claims, and the present negotiations with the majority shareholders, and advises on the proposals for settlement referred to in the letter of 20th February, 1992 written by various companies in the BCCI Group and their respective liquidators to the Government of Abu Dhabi (the "**Proposals**").
- 3 A copy of the letter dated 14th April, 1992 from Norton Rose to the members of the BCCI SA Creditors' Committee is at Appendix 1. The letter indicates how Norton Rose has approached the task of advising the Creditors' Committee so as to enable them to make a recommendation to creditors on the Proposals.

- 4 There is set out in Appendix 2 a list of the documents which have been made available to Norton Rose in the preparation of this report. In view of time constraints, it has not been practicable since 9th April, 1992 to conduct an independent verification of information obtained. For the purpose of this report we have assumed that the information supplied to us by the liquidators is correct. Moreover, there are numerous documents which have not been made available to us for reasons of privilege and banking secrecy under non UK laws. We have, however, seen sufficient documents to be able to give some guidance to the Creditors' Committee which should assist them in forming a view of the Proposals.
- 5 In addition to the information supplied to us by the liquidators, we have received assistance from individual members of the Committee and their solicitors who have provided us with input on the various claims they see against the Majority Shareholders and on the merits of those claims.
- 6 The following foreign lawyers were consulted in relation to certain aspects of this report:

U.S.

Milbank, Tweed, Hadley & McCloy

Luxembourg

Messrs Elvinger & Schank

Abu Dhabi

Hanna, Harpuche & Boulos
Gulf Legal Services Limited

Cayman Islands

Orren Merren & Company

We have experienced serious difficulties in finding independent lawyers in certain jurisdictions and would have wished for more time to explore the position with them.

- 7 David Hunt Q.C., and Alistair Walton of counsel were consulted by Norton Rose in relation to certain aspects of this report.

Definitions

The following terms are defined in the following way:

<u>Abbreviation</u>	<u>Term</u>
the Abu Dhabi Parties	the Government of Abu Dhabi, the Majority Shareholders and the Related Persons;
the ADIA	the Abu Dhabi Investment Authority
BOA	Bank of America
BCC Gibraltar	BCC Gibraltar Limited;
BCCI SA	Bank of Credit and Commerce International S.A.;
BCCI Group	BCCI Holdings and its subsidiaries;
BCCI Holdings	BCCI Holdings (Luxembourg) S.A.;
BCCI Overseas	Bank of Credit and Commerce International (Overseas) Limited;
Branch Share	the amount refunded to a Participating Branch where the liquidator of that branch brings Relevant Proceedings which are successful;
Cayman Liquidators	Ian Wight and Robert Axford of Deloitte Ross Tohmatsu (being the liquidators of BCCI Overseas)
CFC	Credit and Finance Corporation Limited;
CCAH	Credit & Commerce American Holdings BV;
Contribution Agreement	Agreements with Majority Shareholders under which the Government of Abu Dhabi will make funds available, subject to conditions,

	for distribution to <i>certain</i> ordinary unsecured creditors of the Principal BCCI Companies;
Contribution	Contribution of the Government of Abu Dhabi held by the paying agent under the Paying Agency Agreement;
Controls	Financial Controls (Cayman) Limited;
DOJ	United States Department of Justice;
Eligible Creditor	creditor who would be entitled to share in the Contribution but who has not yet accepted the Offer;
English Liquidators	Christopher Morris, Nicholas Lyle and John Richards of Touche Ross & Co. (being the English Liquidators of BCCI SA);
Excluded Branch	a branch of the Principal BCCI Companies not participating in the pooling arrangements;
Financial Support Arrangements	the restructuring of problem loans of some US\$4 billion concluded with the Government of the Abu Dhabi on 22nd May 1991;
Fund	a fund made available by the Government of Abu Dhabi for distribution to <i>certain</i> creditors of the Principal BCCI Companies;
ICIC Overseas Liquidators	Ian Wight and Robert Axford of Deloitte Ross Tohmatsu (being the liquidators of ICIC Overseas);
ICIC Overseas	International Credit & Investment Company (Overseas) Limited;
ICIC Apex Holdings Limited and its subsidiaries	ICIC Group;
Liabilities	Defined in Schedule 1 part 3 of the Contribution Agreement;
Luxembourg Liquidators	Mr Smouha Maitre Jacques Delvaux

and M. Constant Franssens (being the liquidators of BCCI SA)

Mr Al Mazrui

HE Ghanim Faris Al Mazrui

Majority Shareholders

- (a) His Highness Shaikh Zayed bin Sultan al Nahyan, Ruler of Abu Dhabi and President of the United Arab Emirates;
- (b) His Highness Shaikh Khalifa bin Zayed al Nahyan;
- (c) The Government of Abu Dhabi; and
- (d) ADIA;

Oasis Banks

three fully independent banks whom it was proposed would control and manage the operations of the BCCI Group in different parts of the world;

Offer

the offer to be made to creditors on behalf of the Government of Abu Dhabi which a creditor must accept to be able to participate in the Contribution;

Participating Branch

a branch of the Principal BCCI Companies participating in the pooling arrangements;

Pool Realisation Accounts

separate bank accounts to be opened for the collection of proceeds of realisations of assets of BCCI SA, BCCI Overseas, BCCI Holdings and participating subsidiaries;

Principal BCCI Companies

BCCI Holdings, BCCI SA, BCCI Overseas and CFC;

Principal Liquidators

the Luxembourg Liquidators and the Cayman Liquidators;

Proposals

the settlement referred to in the letter of 20th February 1992 written by various companies in the BCCI Group and their respective liquidators to the Government of Abu Dhabi;

Pooling Agreement	Pooling agreements whereby the assets of BCCI SA, BCCI Overseas, BCCI Holdings and CFC and those branches of BCCI SA and BCCI Overseas which participate, will be pooled and distributed rateably amongst creditors;
Qualifying Creditors	creditors who have accepted the Offer;
Mr. Smouha	Brian A. Smouha ;
Related Persons	persons (as defined in the Contribution Agreement) being — generally members related to or connected with the ruling families of the territories forming the United Arab Emirates, certain officeholders in Abu Dhabi, or UAE Government controlled organisations;
Relevant Proceedings	proceedings relating directly or indirectly to the BCCI Group but not including claims that are specifically reserved under the various agreements or actions for the enforcement of those agreements;
Realisations	as defined in schedule 1 part 2 of the Contribution Agreement;
UAE	the United Arab Emirates;
UAE Agreement	the agreements providing for a separate liquidation of UAE branches;
UBL	United Bank Limited of Pakistan;
UNB	Union National Bank

PART 1

Background

BCCI Group structure

- 1 The corporate structure of the BCCI Group as at 30th June 1991 is set out in the organisation chart at Appendix 3.
- 2 The ultimate holding company of the BCCI Group is BCCI Holdings (Luxembourg) S.A. ("**BCCI Holdings**"). The two principal subsidiaries of BCCI Holdings are the Bank of Credit and Commerce International S.A. ("**BCCI SA**"), a Luxembourg-registered company, and BCCI (Overseas) Limited, ("**BCCI Overseas**") a Cayman Islands company. The BCCI Group comprises some 29 other companies incorporated in a variety of jurisdictions. BCCI Holdings and its subsidiaries are referred to in this report as the "**BCCI Group**".

Brief History of the BCCI Group

- 3 The BCCI Group was established in October 1972 by Mr. Agha Hassan Abedi, a banker who had previously been president of the United Bank Limited of Pakistan ("**UBL**").
- 4 The BCCI Group's initial funding came principally from the ICIC Foundation, a trust which is believed to be connected with Mr. Abedi (approximately 35 per cent.), Bank of America (approximately 25 per cent.) and His Highness Sheikh Zaid Bin Sultan al-Nahayan, the ruler of Abu Dhabi (and parties connected with him). The Abu Dhabi ruling family had been amongst the principal clients of Mr. Abedi when he was president of UBL. The BCCI Group's involvement with Bank of America was severed in 1980 pursuant to an arrangement with the ICIC Foundation.

- 5 The BCCI Group's Central Treasury operation, then located in London, suffered a substantial loss in 1986, as a consequence of which a cash injection of some US\$150 million was made. In 1987 the BCCI Group's Central Treasury operations, which until then had been carried on in the name of BCCI Overseas in London, were moved to Abu Dhabi.
- 6 In 1988, Mr. Abedi underwent a heart transplant operation and is understood to have retired from any active day to day involvement with the BCCI Group. His deputy, Mr. Naqvi, took over as chief executive.
- 7 The last audited accounts for each of BCCI Holdings and BCCI SA are for the year ended 31st December 1989. The accounts indicated that the gross assets of the BCCI Group were US\$23.5 billion with net shareholders' funds of US\$42 million (with a note that these funds had subsequently been increased by US\$400 million in April 1990). Included in Appendix 4 is a comparison provided by the English Liquidators of the financial position of the BCCI Group as disclosed in the last audited accounts at 31st December 1989 and the book figures of the assets and liabilities of the major BCCI companies as at 30th June 1991 based on the underlying accounting records (and in particular unaudited branch returns).

Attempts to rescue the BCCI Group

- 8 The Bank of England received several reports from Price Waterhouse, auditors to BCCI SA, during 1990. The first of these, which was dated 18th April, 1990, revealed major gaps in the BCCI SA accounts, suspect accounting, a large number of questionable loans (in some cases made to people who probably did not exist) and lax internal controls.
- 9 As a result, there was a refinancing of the BCCI Group, which resulted in the Majority Shareholders' interests in BCCI Holdings increasing to 77 per cent. At the same time approximately US\$1.8 billion was injected into BCCI SA, and its management operations were transferred from London to Abu Dhabi. Mr. Naqvi, who had taken over as chief executive from Mr. Abedi

in 1988, was replaced by Mr Zafar Iqbal (formerly managing director of the Emirates Division).

- 10 Price Waterhouse prepared a further report dated 3rd October 1990 on the BCCI Group. That report stated that financial support of the order of US\$1.5 billion was required to cover potential losses on accounts with some of BCCI SA's major customers. The covering letter addressed to the chairman of the Audit Committee of BCCI Holdings stated that Price Waterhouse believed that the previous management may have colluded with some of its major customers to misstate or disguise the underlying purpose of significant transactions. The letter stated that Price Waterhouse had discussed the report with both Mr. Iqbal and representatives of the controlling shareholders and following their recommendations they understood that the latter had agreed to take immediate action to:
 - (a) finalise arrangements for providing the necessary financial support;
 - (b) make board and management appointments;
 - (c) initiate an investigation into the problem loans.
- 11 On 4th March 1991, the Bank of England instructed Price Waterhouse to carry out an investigation under section 41 Banking Act 1987 to ascertain whether significant accounting transactions undertaken by BCCI SA, or other companies within the BCCI Group, may have been either false or deceitful, or their underlying purpose may have been disguised or otherwise mis-stated.
- 12 Prior to the section 41 Banking Act enquiry, negotiations had been under way for some time regarding the proposed restructuring of problem loans of some US\$4 billion which it was proposed would be dealt with under financial support arrangements (the "Financial Support Arrangements") to be concluded with the Government of Abu Dhabi.

- 13 The Financial Support Arrangements were signed on 22nd May 1991. The problem loans were transferred at book value to new companies owned (except in the case of Controls which is a subsidiary of the BCCI Group) directly by the Government of Abu Dhabi. In return for the loan assets transferred, BCCI SA received promissory notes denominated in US dollars and UAE dirhams, equivalent in face value to US\$3.061 billion and in addition guarantees totalling US\$750 million issued by the Abu Dhabi Government for the loans vested in Controls. There was a twofold residual risk to BCCI SA in respect of these transfers:
- (a) The agreements for the transfer of loan assets to certain of the companies provided that the loan assets could be reassigned to the appropriate BCCI SA entity in the event of any breach of the warranty that the loan assets did not involve any activity which was criminal or illegal and which, if revealed, might be expected to damage the international reputation of the Abu Dhabi Government. The Abu Dhabi Government confirmed that it was not its intention to reassign the loan assets in question on the basis of the circumstances known to it at the time.
 - (b) Insofar as the loan assets of US\$1.016 million transferred to Controls exceeded the amount of the guarantees by the Government of Abu Dhabi of US\$750 million, the BCCI Group was to bear any additional losses on realisation.

The promissory notes have since been seized by the Abu Dhabi authorities under the terms of various Abu Dhabi court orders and a high proportion of the monies due to BCCI SA under the promissory notes remains unpaid. This issue is considered in detail in Part 2 of this Report.

- 14 Following the conclusion of the Financial Support Arrangements, a major restructuring programme was planned which involved a corporate reorganisation of the BCCI Group and disposal of non-productive businesses. The restructuring included the formation of three fully independent banks

(the "**Oasis Banks**") to control and manage the operations of the then existing BCCI Group in the following regions:

- Europe and Canada
- The Middle East and Asian subcontinent
- The Far East.

Under the plan, a substantial part of the BCCI SA network was to be wound up or sold off.

The Oasis Banks were to acquire those businesses of BCCI Holdings and its subsidiaries which constituted viable entities. This involved negotiations with regulators in the various territories with a view to all three Oasis Banks being operational prior to 31st December 1991. The thrust of the reorganisation was to rationalise the cost base of each operation in line with its business potential, to improve the competitiveness of the banks in their core businesses, to strengthen operational controls and to increase the income generated from the major clients of each region through the creation of new region-wide corporate units. An application for authorisation for the Oasis Bank for Europe and Canada (which was to be based in London) was submitted to the Bank of England early in June 1991.

- 15 The combined effect of the transfers and the disposals envisaged would have been to transfer the banking operations of BCCI SA from Luxembourg to Abu Dhabi by the end of 1991, and from Grand Cayman by the end of 1992, with disposal of all of BCCI Holdings' banking affiliates to have taken place by the end of 1992.
- 16 A draft of the section 41 Banking Act report produced in accordance with the instructions referred to in paragraph 11 was delivered to the Bank of England on 22nd June 1991. This report revealed certain irregularities and related matters which had come to the attention of Price Waterhouse

including in particular potential deposits of approximately US\$600 million not recorded in the books of BCCI SA or any of its related entities. As part of the Financial Support Arrangements (which had already been concluded by the date of the report) the Government of Abu Dhabi had issued to BCCI Holdings a comfort letter agreeing to be responsible for such deposit liabilities up to a maximum amount of US\$600 million.

The draft section 41 report concluded that the accounting records and financial position of the BCCI Group had been falsified for a substantial number of years through a series of complicated manipulations allegedly on such a scale that the true financial history of BCCI SA is unlikely ever to be discovered.

Liquidation of BCCI Group Companies

- 17 On 3rd July 1991, the latest draft restructuring plan of the Abu Dhabi authorities was sent to the Bank of England and to the Luxembourg authorities. On 5th July 1991 the Bank of England petitioned for the winding up of BCCI SA in England. Christopher Morris, Nicholas Lyle and John Richards of Touche Ross & Co. were appointed Joint Provisional Liquidators of BCCI SA by order of the High Court in London. The same day, they were also appointed Joint Provisional Liquidators of BCCI SA by the Court of Session in Scotland.
- 18 On 8th July 1991, Brian A. Smouha ("**Mr. Smouha**"), a partner of Touche Ross & Co. in London, was appointed "Commissaire de Surveillance" of BCCI SA by the District Court of Luxembourg under article 38 of the Luxembourg Banking Act 1984 under a procedure known as "gestion controlee". Gestion controlee is a system for the controlled management of a company by a person appointed by the Luxembourg courts. Within a maximum of six months, Mr. Smouha was required to deliver to the District Court of Luxembourg a report recommending either the restructuring of BCCI SA or its liquidation.

Mr. Smouha was also directed to secure and protect the world-wide assets of BCCI SA. During the controlled management procedure, all actions and all enforcement measures against BCCI SA are stayed and no judgments may be obtained without the Commissaire's express prior approval.

- 19 Immediately on appointment, the Provisional Liquidators of BCCI SA dispatched teams to identify, secure and preserve the assets of BCCI SA. Because of the complex international nature of the BCCI Group, where partners of Touche Ross & Co. were appointed in various jurisdictions, attempts were made to co-ordinate efforts. This involved closure of branches, identification of assets, making arrangements to deal with any questions which depositors or other creditors of BCCI SA might have and making funds available to pay each employee's salary from 1st July 1991 until the earlier of 31st July 1991 or formal redundancy. Certain preliminary examinations of the value of BCCI SA's assets and liabilities were also made by the Provisional Liquidators.
- 20 At the hearing of the petition to wind up BCCI SA on 22nd July 1991 the the Government of Abu Dhabi, supported by BCCI SA, requested that the petition be adjourned on the grounds that a further restructuring support operation was in an advanced stage of negotiation.

At a further hearing of the petition on 30th July 1991, the Court noted that, if a winding up order was made, the assets of BCCI SA worldwide would be applicable to satisfy the claims of creditors of BCCI SA worldwide. Any attempt to put a "ring fence" around either the assets or the creditors to be found in any one jurisdiction is contrary to English law. The Court had regard to the interests of the 1.25 million depositors of BCCI SA worldwide as a whole. The Court regarded it as necessary to provide sufficient time for enquiries into a possible restructuring to be carried out, and granted an adjournment until 2nd December 1991.

- 21 The position in relation to BCCI Holdings in Luxembourg in July 1991 was as follows:
- (a) Under the Grand Ducal Decree of 1935, the District Court, prior to initiating a controlled management over a debtor, can first delegate one of its judges to ascertain whether a controlled management is practicable in the light of the debtor's position.
 - (b) On 9th July 1991, on the application of BCCI Holdings, Judge Welter was appointed in respect of BCCI Holdings for this purpose.
 - (c) Judge Welter appointed Mr. Smouha in order to report to her on or before 1st August 1991 as to BCCI Holdings' financial situation.

On 1st August 1991 Mr. Smouha, the Commissaire of BCCI SA, Maitre Jacques Delvaux and M. Constant Franssens were appointed Commissaires of BCCI Holdings by the District Court of Luxembourg.

- 22 On 22nd July 1991, by an Order of the Grand Court of the Cayman Islands, Ian Wight and Robert Axford of Deloitte Ross Tohmatsu were appointed joint provisional liquidators of International Credit & Investment Company (Overseas) Limited ("ICIC Overseas"), a Cayman Islands company which was originally established in 1976 as a wholly-owned subsidiary of International Credit & Investment Company Limited of Vaduz, Liechtenstein. The corporate structure of the ICIC Group is set out in the diagram at Appendix 5.
- 23 The link between ICIC Overseas and the BCCI Group, the way in which the BCCI Group itself managed its affairs and the intervention of BCCI SA management in the affairs of ICIC Overseas make it difficult to distinguish clearly in some instances between the funds belonging to ICIC Overseas and those belonging to the BCCI Group. There were depositors, customers and borrowers common to both the BCCI Group and ICIC Overseas. The role of ICIC Overseas was critical to BCCI SA management in generating funds

and operating routing accounts through which funds could be diverted into the BCCI Group for the purposes of manipulating accounts and falsifying results.

- 24 On 1st August 1991 the Commissaires of BCCI Holdings, the Commissaire of BCCI SA, the Provisional Liquidators of BCCI SA and the Provisional Liquidators of BCCI Overseas filed petitions pursuant to 11 USC section 304 in the United States Bankruptcy Court, Southern District of New York, as foreign representatives to protect the assets of BCCI Holdings, BCCI SA and BCCI Overseas in the USA for the benefit of creditors.

At the direction of Judge Garrity, Counsel for the petitioners in the USA had been attempting to settle the objections of various parties raised in the section 304 proceedings. Pursuant to this direction, on the advice of their US Counsel, the petitioners entered into agreements with the States of California and New York, contained in a Court Order entered on 15th October 1991, under which the Petitioners agreed that the State Superintendents of Banking in California and New York be permitted to conduct their respective State Court liquidation procedures (settling the claims of valid State claimants). Any surplus assets held by the New York and Californian Superintendents are to be turned over to the Bankruptcy Court in due course.

- 25 On 26th July 1991, a New York State grand jury returned an indictment charging five BCCI entities (including BCCI SA) and two individuals with various offences. In paragraph 20.13 of their report dated 29th November 1991, the Joint Provisional Liquidators stated that BCCI SA and BCCI Overseas faced the prospect of very heavy fines and civil money penalties in the USA.

A Plea Agreement entered into on 19th December, 1991 with various United States prosecuting and regulatory authorities provides for Court Appointed Officers (other than the Provisional Liquidators) to cause BCCI SA, BCCI Overseas, BCCI Holdings and ICIC Overseas to plead guilty to various charges all relating to activities of the former management and operators of these companies prior to 5th July 1991. Under the terms of the Plea

Agreement, all assets of BCCI SA, BCCI Overseas, BCCI Holdings and ICIC Overseas in the USA would be forfeited to the United States Department of Justice ("DOJ"); approximately half of such assets would be retained by the DOJ for specified purposes (principally to serve as a fund for possible financial assistance to First American and Independence Bank) and the other half, subject to certain conditions being satisfied, will be paid over to Court Appointed Officers for the benefit of creditors. As part of the Plea Agreement, the Board of Governors of the Federal Reserve System has agreed not to enforce its previously announced US\$200 million civil money penalty against BCCI SA, and the US agencies have also agreed to settle all pending criminal and civil proceedings against BCCI SA and to refrain from bringing any such proceedings in the future with certain limited exceptions. —

- 26 Although the Provisional Liquidators are not signatories to the Plea Agreement, they were directly affected by its execution. Under the terms of the Plea Agreement, the Court Appointed Officers were obliged, upon execution of the Plea Agreement, to make available the sum of US\$5 million to be paid as an interim capitalisation payment to Independence Bank in exchange for shares in Independence Bank. The US\$5 million so paid would be refunded to the Court Appointed Officers out of the forfeited assets in priority to any other payment from such forfeited assets. If the sum of US\$5 million were made from balances held outside the UK, the Court Appointed Officers anticipated that there would be difficulties in continuing to exercise their functions by reason of the limited funds which would then be available. It was accordingly proposed that such payments should be made out of the funds held in the UK under the control of the Provisional Liquidators.

Before entering into the Plea Agreement, legal advice was sought and directions were obtained from the Courts in Luxembourg and the Cayman Islands. On 13th December 1991, directions were obtained from the High Court in London authorising and directing the Provisional Liquidators to make available to the Court Appointed Officers US\$5 million out of the assets under their control for the purposes of the interim capitalisation payment for Independence Bank under the Plea Agreement. The Plea Agreement itself has not been approved by the English courts.

- 27 At the adjourned hearing of the petition to wind up BCCI SA before the High Court on 2nd December 1991, the Provisional Liquidators sought a further short adjournment for two reasons: to enable discussions with the Majority Shareholders to continue with a view to finalising the proposed arrangements for a payment to be made by the Majority Shareholders to the creditors of the BCCI Group and secondly to enable the date of winding up orders in respect of BCCI SA and BCCI Overseas to be synchronised as far as possible in the United Kingdom and Luxembourg and in the Cayman Islands.
- 28 On 3rd January 1992, the Luxembourg Court ordered the liquidation of BCCI SA and appointed Mr. Smouha, Maitre Georges Baden and Maitre Julien Roden as liquidators. On 14th January 1992, on the adjourned hearing of the winding up petition of BCCI SA before the High Court in London, a compulsory winding up order was granted. It was stated that discussions with the Majority Shareholders had continued and significant progress had been made.
- 29 After many meetings in Abu Dhabi, the Proposals were initialled on 20th February 1992 setting out the terms on which the Government of Abu Dhabi will pay to a designated fund approximately US\$1.7 billion, which will be available for distribution to certain creditors of BCCI SA. These arrangements are summarised in the following section of this Report and need court approval in Luxembourg, the Cayman Islands and England.

The Proposals

30 The draft proposed agreements giving effect to the Proposals may be broadly categorised as follows:

- (a) An Agreement (the "**Contribution Agreement**") with the Majority Shareholders of the BCCI Group companies under which the Government of Abu Dhabi will make funds available, subject to conditions, for distribution to *certain* ordinary unsecured creditors of BCCI SA, BCCI Overseas, BCCI Holdings and Credit and Finance Corporation Limited ("CFC") (together the "**Principal BCCI Companies**").
- (b) a set of pooling agreements whereby the assets of BCCI Holdings, BCCI SA and BCCI Overseas (excluding assets of those branches which choose not to participate), will be pooled and distributed rateably amongst their creditors and whereby BCCI Holdings and other of its subsidiaries may join in these pooling arrangements (the pooling agreement between BCCI SA and BCCI Overseas being the "**Principal Pooling Agreement**" and all such agreements being collectively the "**Pooling Agreement**").

The Contribution Agreement is conditional (*inter alia*) on the Principal Pooling Agreement (1) being approved by the courts in Luxembourg, Cayman and England and (2) being completed and coming into full force and effect.

31 There are three other separate but related matters which form part of the Proposals. They are:

- (a) arrangements under a separate agreement (the "**UAE Agreement**") for a separate liquidation of branches of BCCI SA in The United Arab Emirates ("**UAE**");

- (b) arrangements under a separate agreement (the "**ICIC Agreement**") for the orderly liquidation of companies within the ICIC group with a release of claims between ICIC group companies, the Majority Shareholders and the Principal BCCI Companies; and
 - (c) arrangements under a separate agreement (the "**UNB Agreement**") for the disposal of the 40 per cent interest of BCCI Holdings in Union National Bank ("**UNB**") to the Abu Dhabi Investment Authority ("**ADIA**").
- 32 The arrangements envisaged by the UAE Agreement and the ICIC Agreement are conditional upon the Contribution Agreement being completed. The Proposals are presented as a package and the Liquidators have asserted that this is the only basis on which the contribution arrangements could be agreed with the Government of Abu Dhabi. However, the pooling arrangements are not conditional upon completion of the other agreements. The liquidators wish the pooling arrangements to proceed even if the contribution arrangements do not.

The Pooling Arrangements

- 33 The central elements of the pooling arrangements are as follows:
- (a) Those companies and branches which become part of the arrangements will place the proceeds of any realisations of their assets (after deducting costs and amounts to pay preferential creditors) into a pool under the control of the Luxembourg Liquidators and the Cayman Liquidators;
 - (b) The claims of all creditors of pooling companies and branches will effectively be "converted" into claims against the pool and each creditor will receive the same dividend from the pool in respect of their admitted claims.
- 34 The Principal Pooling Agreement is conditional upon:

- (a) approval of its terms by the Luxembourg, Cayman Islands and English Courts;
- (b) approval by the Cayman Islands Courts of certain directions in relation to the winding up of BCCI Overseas, including the appointment of a committee of creditors; and
- (c) approval by the English Courts of an order permitting the English Liquidators to transmit to the Luxembourg Liquidators the proceeds of realisation of BCCI assets within an English jurisdiction.

35 The Principal Pooling Agreement is between BCCI SA and BCCI Overseas but there is an agreement whereby BCCI Holdings becomes a party to the arrangements and there are branch participation agreements under which branches of BCCI SA and BCCI Overseas and subsidiaries of BCCI Holdings can join the arrangements (subject to necessary Court approvals). Of the subsidiaries, the liquidators anticipate that only BCC Gibraltar Limited ("**BCC Gibraltar**") and CFC will participate. In many other jurisdictions, the liabilities and assets of the branches can be ring-fenced so that creditors of the branch are likely to receive a higher dividend from the ring-fenced liquidation of the branch than from the pool.

36 The Luxembourg Liquidators and the Cayman Liquidators undertake to co-operate and use their best endeavours to realise BCCI SA and BCCI Overseas property and assets. This, and the avoidance of disputes as to the ownership of assets between the pooling entities, are the primary justifications for the proposed pooling arrangements. Separate bank accounts ("**Pool Realisation Accounts**") are to be established for the collection of BCCI SA and BCCI Overseas proceeds, proceeds of realisation in respect of participating subsidiaries and proceeds of realisation of BCCI Holdings' assets.

37 As soon as practicable after each "Review Date", which is defined in the Pooling Agreement as the date on which it becomes unconditional, each subsequent anniversary thereof and any other date agreed between the

Luxembourg Liquidators and the Cayman Liquidators, the Luxembourg Liquidators and the Cayman Liquidators will undertake a review as to:

- (a) amounts standing to the credit of the Pool Realisation Accounts;
- (b) prospects of further realisations;
- (c) liabilities of BCCI SA, BCCI Overseas, BCCI Holdings and any participating subsidiary which are capable of being admitted for the purpose of payment of dividends;
- (d) third party claims to ownership of pool property;
- (e) any prospective obligation to make payments to the Majority Shareholders under the Paying Agency Agreement or the Contribution Agreement.

38 Upon completion of their review the Luxembourg Liquidators and Cayman Liquidators will, after making appropriate reserves in respect of costs and liabilities, determine the amount available for distribution to admitted pool creditors and will arrange for the distribution of that amount out of the Pool Realisation Accounts to themselves and to the liquidators of BCCI Holdings and of each participating branch or subsidiary so as to enable distributions to be made to admitted pool creditors rateably in proportion to their then admitted claims against the pool.

39 Where a creditor's claim has not been admitted before a distribution is made the Pooling Agreement provides that that creditor may not contest the distribution but that once his claim is admitted any earlier dividend that he should have received will be paid in priority to any further dividends to be paid to pool creditors.

40 The Luxembourg Liquidators and the Cayman Liquidators may, where a creditor has received or is entitled to receive any payment in respect of assets of BCCI SA or BCCI Overseas not included in the pooling arrangement, take such steps as they consider necessary to ensure that the

creditor only receives an aggregate amount equal to the dividends payable to creditors generally out of the pool.

- 41 The Luxembourg Liquidators and Cayman Liquidators will not make a distribution until all necessary court approvals are obtained in respect of all entities participating in the pooling arrangements. In practice, this may delay distributions and cause problems if a large number of jurisdictions participate in the pool. The Pooling Agreement does not provide what is to happen if one of the court approvals (for example in relation to a participating subsidiary) is withheld. The English Liquidators have no right to block a subsidiary in an unco-operative jurisdiction from joining the pool. -
- 42 Different laws will apply in relation to the various companies and branches participating in the pooling arrangement, in respect of matters such as admission of claims to proof, determination of preferences and distributions out of the pool.
- 43 It should be noted that, in relation to a creditor of any participating branch of BCCI SA or BCCI Overseas, the law to be applied in determining the creditor's right to be admitted to proof in the pool will be that applicable to the principal liquidation (i.e. Luxembourg law for a creditor of BCCI SA and Cayman Islands law for a creditor of BCCI Overseas) rather than the local law that would have applied to a local liquidation of the relevant branch. The English Liquidators and liquidators of participating branches of BCCI SA are required to permit their local liquidations to become ancillary to the principal liquidation in Luxembourg. Similarly, in relation to branches of BCCI Overseas, local liquidations will be required to become ancillary to the Cayman Islands liquidation.
- 44 The Principal Pooling Agreement and the court order referred to at paragraph 34 above provide for transmission by the English Liquidators to the Luxembourg Liquidators of all proceeds of realisation of the assets of BCCI SA falling within the jurisdiction of the English courts after making provision for the following:

(a) costs and expenses payable in the English liquidation;

- (b) preferential claims;
 - (c) third party assets;
 - (d) rights of set-off or cross-claim which would have been available to debtors if they had been sued by the English Liquidators;
 - (e) claims which would be admissible in the English liquidation but not in the Luxembourg liquidation. This may pose problems in relation to interest on claims.
- 45 The Pooling Agreements envisage that arrangements will be made by the Luxembourg Liquidators and the Cayman Liquidators with the English and other local liquidators to meet preferential claims in their local liquidations out of assets held by them locally. Alternatively payments in respect of preferential claims may be made out of the Pool Realisation Accounts.
- 46 The Principal Liquidators are to be permitted to make distributions to admitted pool creditors before the amount of all preferential claims against the pool is determined, on the basis that they certify that they consider there to be a sufficient provision to pay all preferential claims in full.
- 47 BCCI SA and the Luxembourg Liquidators on the one hand and BCCI Overseas and the Cayman Liquidators on the other will enter into reciprocal deeds of covenant whereby they agree not to sue each other in respect of debts or claims that they may have against each other, including any claims to prove in the liquidation of the other, and to return to the other any sums that may be received in a winding up of the other. Similar releases will be obtained from BCCI Holdings and participating subsidiaries.
- 48 The Pooling Agreement may be varied by agreement between the Luxembourg Liquidators, the Cayman Liquidators and the English Liquidators without the need for further directions from the courts, provided that they certify that the variation will not be materially prejudicial to creditors or that it is of a formal or minor nature.

- 49 Disputes arising in relation to the Pooling Agreement are to be determined by arbitration in England. The Pooling Agreement is governed by English law.

The Contribution Arrangements

- 50 Under this subheading there is discussed the arrangements under the Contribution Agreement and the Paying Agency Agreement for the Government of Abu Dhabi to make a fund available to be applied towards the claims of *certain* of the creditors of the Principal BCCI Companies. The creditors of any other members of the BCCI Group appear to be excluded from compensation.
- 51 The contribution arrangements will not proceed unless the following principal conditions are met:
- (i) the Principal Pooling Agreement is approved by the Courts of Luxembourg, England and the Cayman Islands and becomes unconditional and in full force and effect in all respects;
 - (ii) the Contribution Agreement, the Paying Agency Agreement and the other ancillary documentation (principally the ICIC Agreement and the UAE Agreement) are also approved by the Courts of Luxembourg, England and the Cayman Islands;
 - (iii) eligible creditors with claims admitted to proof by the Luxembourg Liquidators or the Cayman Liquidators (each an "**Admitted Claim**") totalling US\$7 billion must accept the offer of the Government of Abu Dhabi referred to further below on or before 30th September 1992 (or 30th November 1992 at the Government's option).
- 2 There are four principal elements to the Contribution Arrangements:
- The Government of Abu Dhabi makes available a fund for distribution to *certain* creditors of the Principal BCCI Companies;

- The release by the Principal BCCI Companies and by all those creditors who accept the Proposals of all claims (other than ordinary-course-of-business claims) against the Government of Abu Dhabi, the Majority Shareholders and the Related Persons (together the "**Abu Dhabi Parties**");
- The release by the Abu Dhabi Parties of any claims (other than ordinary-course-of-business claims) against the Principal BCCI Companies; and
- An agreement to pursue and share the proceeds of certain litigation against auditors and others.

53 The proposed contribution of the Government of Abu Dhabi (the "**Contribution**") is made available by payment to a fund held by a paying agent (the "**Fund**"). The amount and the distribution of this fund are governed by the terms of the Contribution Agreement and the Paying Agency Agreement. The Contribution (US\$1.7 billion subject to adjustment) is paid into the fund by instalments and is subject to adjustment according to the ultimate amount of the Liabilities (as defined in schedule 1 part 3 of the Contribution Agreement) of the Principal BCCI Companies and the ultimate amount of the Realisations (as defined in schedule 1 part 2 of the Contribution Agreement) by the liquidators of the Principal BCCI Companies. If the Liabilities exceed US\$10 billion, the Contribution will be increased by 25% of the excess and if the Liabilities are less than US\$10 billion the Contribution will be reduced by 25% of the deficit. The amount of such reductions or increases is, however, capped at US\$500 million. With regard to Realisations, no adjustment will be made if realisations are US\$2.5 billion or less but Realisations above this figure lead to a decrease in the Contribution.

If a reduction of the Contribution derives from Liabilities being less than US\$10 billion, the consequent repayment of the Contribution to the Government of Abu Dhabi will be made out of the Fund itself and the Paying Agent retains an amount in the Fund to enable it to meet any such

repayment liability. To the extent that any reduction relates to Realisations in excess of \$2.5 billion, the consequent repayment to the Government of Abu Dhabi will be met out of the pooled proceeds of Realisations ahead of the rights to distribution of creditors of the companies which are within the pool.

After initial payments of US\$300 million and US\$500 million, the Contribution is payable by two further instalments, one of US\$500 million on 20th June 1993 and a final instalment of US\$400 million on 20th June 1994.

54 There are three central features of the proposals for the distribution of the Contribution:

- (a) not all creditors of BCCI Group companies can obtain a share;
- (b) in certain circumstances, amounts of the Contribution are returned to the Government of Abu Dhabi; and
- (c) not all sums in the Fund are to be immediately distributed, certain amounts being retained pending distribution to qualifying creditors or return to Abu Dhabi.

55 The conditions that a BCCI Group creditor must satisfy to be entitled to share in the Contribution can be summarised as follows:

- (i) The first condition is that the creditor must be a creditor of one of the Principal BCCI Companies or of BCC Gibraltar. The Principal BCCI Companies are BCCI Holdings, BCCI SA, BCCI Overseas and CFC. Creditors of other BCCI Group companies are not entitled to a share in the Contribution even if the company concerned has entered into the pooling arrangements.
- (ii) In order to share in the Contribution, a creditor must have accepted an offer from the Government of Abu Dhabi. There are certain

cannot, accordingly qualify. These include government bodies in respect of fines or taxes and persons against whom claims are to be or are being brought in connection with the BCCI Group's affairs.

- (iii) It is a term of accepting an offer from the Government of Abu Dhabi that the creditor must release any claims it has against the Abu Dhabi Parties in connection with the affairs of the BCCI Group. An eligible creditor accepting such an offer (and giving the relevant release) after distributions have already been made will be entitled to "catch-up" payments to be on the same footing as those existing creditor recipients but runs the risk that there will not be sufficient funds remaining to enable such catch-up payments to be made in full.
- (iv) With regard to creditors of branches, where the relevant branch is part of the pooling arrangements (a "**Participating Branch**"), its creditors are entitled to share in the contribution on the same basis as creditors proving against the Principal Liquidators or the English Liquidators, provided always that the liquidator of the branch of which they are a creditor has not brought Relevant Proceedings. Where the relevant branch is not a party to the pooling arrangements (an "**Excluded Branch**") creditors of that branch cannot generally share in the Contribution although there are provisions whereby some of the benefit of the Contribution may be extended to them if their branch liquidator gives a release of any claims against the Abu Dhabi Parties that could be brought in Relevant Proceedings.
- (v) Finally, a creditor will not be entitled to share in the Contribution if such creditor bring Relevant Proceedings.

56 The ultimate receipt of creditors entitled to share in the Contribution will depend on the amount of the Contribution available for distribution. The Contribution is initially \$1.7 billion but all or parts of it may be required to be returned to the Government of Abu Dhabi in the following circumstances:

- (a) if the Principal Liquidators or the English Liquidators commence Relevant Proceedings, the whole of the fund then undistributed will be returned;
- (b) if Liabilities admitted to proof are less than \$10 billion (see paragraph 26 above) part of the fund up to a maximum of US\$500 million must be returned;
- (c) if a creditor eligible to accept the Offer (a "Creditor") (whether or not such creditor has accepted the offer) commences Relevant Proceedings, an amount of the Contribution is returned equal to the same proportion of the Contribution as the relevant Creditor's claims represent of all the Liabilities;
- (d) if a branch liquidator of a Participating Branch brings Relevant Proceedings which are *successful*, the "Branch Share" of that branch is refunded. The Branch Share of a branch is essentially the same proportion of the Government's Contribution as the aggregate Liabilities of that branch represent of the aggregate of all the Liabilities; and
- (e) if an Excluded Branch liquidator brings Relevant Proceedings (whether or not they are successful) that Branch's Share is returned.

In the case of all such repayments to the Government of Abu Dhabi, they are required to be made only to the extent that there are amounts in the Fund to make them. There are also provisions to prevent double-counting in respect of such repayments back. For example, if a Branch Share is paid back, credit will be given for any payment back already made under (c) above in respect of a creditor of that branch. Equally, it is agreed that where, for instance, a Branch Share is returned, there will be deducted from the amounts so repaid any amount already distributed to creditors of that branch.

57 The Paying Agent will not distribute the Contribution immediately. Apart from the fact that the Contribution will only be paid into the Fund in instalments, there are three main retentions that will be made:

- (a) Since the sum of up to £500 million could be required to be refunded to the Government of Abu Dhabi according to the amount by which Liabilities of the BCCI Group fall short of \$10 billion, the Paying Agent will not distribute the last US\$500 million of the instalments of the Contribution until the final amount of this refund (if any) is settled;
- (b) At any one time there will be a number of creditors who would be eligible to share in the Contribution but have not yet accepted the Offer. In the Paying Agency Agreement, such creditors are defined as "**Eligible Creditors**" and creditors who have accepted the Offer, (and given the relevant release) are defined as "**Qualifying Creditors**". The Contribution is notionally divided into shares for each such creditor (ie both Eligible Creditors and Qualifying Creditors), each creditor's share being the same proportion of the Contribution as the relevant creditor's claim represents of the total of the Liabilities. The Paying Agent will delay distributing any Eligible Creditor's Share until the earlier of:
 - (i) the Government of Abu Dhabi being satisfied that the Eligible Creditor is not likely to bring Relevant Proceedings; and
 - (ii) the end of the agency period, namely 20 years from the date of the Paying Agency Agreement.

It should be noted that, when released, the distribution of an Eligible Creditor's Share will not be made to the Eligible Creditor concerned. It will be made only to Qualifying Creditors.

- (c) Similarly, the Contribution is also notionally divided into shares relating to branches (each a "**Branch Share**") - a Branch Share being

that proportion of the Contribution as the Liabilities attributable to that branch represent of the total of the Liabilities. Where a branch is an Excluded Branch, the Paying Agent will retain and not distribute an amount equal to the Branch Share of that branch until the earliest of:

- (i) the liquidator of that branch giving a release of any claims of that branch against the Abu Dhabi parties;
- (ii) the Government of Abu Dhabi being satisfied that the relevant branch is not likely to bring Relevant Proceedings; and
- (iii) the end of the agency period, i.e. 20 years.

58 The Contribution Agreement provides for a release by the Principal Liquidators and the English Liquidators of all claims of his Principal BCCI Companies against the Abu Dhabi Parties (other than ordinary-course-of-business claims). The claims released are listed in schedule 2 of part 2 to the Contribution Agreement which refers in general terms to any causes of action against the Abu Dhabi Parties and then lists certain agreements under which causes of action are specifically released. These releases are supplemented by releases in the ICIC Agreement referred to further below.

59 The Contribution Agreement provides that the Abu Dhabi Parties will release any claims which they may have (other than ordinary-course-of-business claims) against the Principal BCCI Companies (although this release will not benefit Excluded Branches). The claims released are listed in part 3 of schedule 2 to the Contribution Agreement. They include a general description of such claims and also a list of agreements under which claims against the Principal BCCI Companies may have arisen and under which any such claims are expressly released. The releases referred to in this and the preceding paragraph are supplemented by releases in the ICIC Agreement referred to further below.

60 The Contribution Agreements provides the following in relation to claims against third parties of the Principal BCCI Companies, the Government of Abu Dhabi and the Majority Shareholders in connection with the affairs of the BCCI Group.

- (a) The Principal BCCI Companies, the Government of Abu Dhabi and the Majority Shareholders will share any proceeds of such claims equally, after deducting any costs of recovery and any costs or damages suffered by either party in respect of relevant counterclaims;
- (b) there are obligations on both sides to use reasonable endeavours to pursue claims against third parties (subject to certain limitations); and
- (c) certain claims of the Principal BCCI Companies against certain specified third parties are to be assigned to the Government of Abu Dhabi who will then pursue these claims and share the proceeds in equal shares with the Principal BCCI Companies. These claims are listed in schedule 2, part 4 of the Contribution Agreement and include claims against Price Waterhouse, Ernst & Whinney (but, it appears, only in respect of the audit of BCCI Overseas for the financial years ended 31st December 1985 and 31st December 1986 and any other claim that Abu Dhabi feels that is necessary to pursue in order to pursue the claims against Price Waterhouse), Allen & Overy and claims against named individuals (including previous directors of the Bank).

61 There are three principal features of the arrangements for the UAE branches:

- (i) a local liquidator takes control of the assets of the UAE branches (namely debts due from third parties *to those branches* and other assets used principally by the UAE branches with certain exceptions) and also assumes responsibility for liabilities attributable to the UAE branches, once again with certain exceptions. Where a creditor of a UAE branch receives a payment in the liquidation of one of the Principal BCCI Companies which should have been the subject of a

dividend in the UAE liquidation, the UAE liquidator is obliged to indemnify the Principal BCCI Companies concerned for the amount so paid out.

- (ii) The UAE branches are effectively admitted as a creditor in the liquidation of BCCI Overseas in the amount of \$344 million and the liquidation of BCCI SA in the amount of \$426 million, such amounts to be reduced by any set offs which BCCI Overseas and BCCI SA may have in respect of amounts owed by the UAE branches to them. We have no information as to whether these amounts are appropriate.

- (iii) Funds will probably be provided by the Abu Dhabi Government to swell the assets available in the UAE liquidation although these are likely to be available primarily (and perhaps only) for the benefit of UAE deposit creditors.

62 It is a condition of the Contribution Agreement that BCCI Holdings will transfer its 40% interest in UNB to the ADIA for a nominal consideration. It is also provided in the Contribution Agreement that UNB will be admitted in the liquidation of BCCI SA for \$6.5 million and in the liquidation of BCCI Overseas for not less than \$264 million. It is also part of these arrangements that the ADIA will be admitted in the liquidation of BCCI Overseas for an amount of not less than \$885 million. We have no information as to whether these amounts are appropriate.

The ICIC Agreement has three features:

- (a) a release by the Government of Abu Dhabi and the Majority Shareholders of claims against members of the BCCI Group that may be brought in respect of funds or assets deposited with members of the ICIC Group by the Majority Shareholders or the Government;
- (b) a mutual release between the Principal BCCI Companies and ICIC of any claims each may assert against the other (with the exception of the ordinary banking business claims mentioned below); and

- (c) provisions for ordinary banking claims between Principal BCCI Companies and the ICIC Group to be netted off and any ultimate balance owing to Principal BCCI Companies to be subordinated to the claims of other ICIC Creditors; if an ultimate balance is owing to ICIC, it will rank pari passu with claims of other creditors in the liquidations of the Principal BCCI Companies.
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PART II

Norton Rose

INTRODUCTION**INDEX**

1. In this Part we considered the various claims that are plainly a very important feature of the Proposals. The potential advantages and disadvantages of the Proposals as perceived by the Joint Liquidators are set out in paragraphs 8,9,15 and 16 of their Report dated 16th March 1992 and at pages 10 to 21 and 30 to 36 of Appendix 3 to that Report. We do not propose to recite the Joint Liquidators' comments in this Part.

The Proposals

2. The features of the Proposals which are important for the purposes of the present analysis are as follows. In return for the provision by the Government of Abu Dhabi of the sum of US \$1.7 billion (subject to adjustment) for distribution to those creditors of the BCCI Companies who accept an offer to be made to them by the Government of Abu Dhabi:
 - (i) (by clause 8(B)(1) of the Contribution Agreement) the Principal BCCI Companies agree to release any rights they may have against the Abu Dhabi Parties in respect of, relating to or arising from and under "the BCCI Group Claims" as defined in part 2 of schedule 2 to the Contribution Agreement;
 - (ii) (by clause 8(B)(2) of the Contribution Agreement) the Government of Abu Dhabi, the Majority Shareholders and the Related Persons agree to release any rights they may have against the Principal BCCI Companies in respect of, relating to or arising from and under "the Majority Shareholder Claims" as defined in part 3 of schedule 2 to the Contribution Agreement;
 - (iii) (by clause 4 of the ICIC Agreement) the Government of Abu Dhabi on behalf of the Majority Shareholders agrees to release the Principal BCCI Companies and ICIC in respect of "the Released Claims" as therein defined;

- (iv) any creditor who wishes to share in the funds made available by the Government of Abu Dhabi must agree to release any claim he may have against the Abu Dhabi Parties; and
 - (v) (by clause 3 of the Contribution Agreement) all recoveries from claims against third parties will be shared equally between the Principal BCCI Companies and the Government of Abu Dhabi.
3. We were not privy to the lengthy negotiations which culminated in the Proposals. Accordingly we have no knowledge of the basis upon which the figure of US \$1.7 billion was agreed. We take the view that in order properly to discharge the duty imposed upon us by the Court of advising the Creditors' Committee upon the Proposals we should attempt to evaluate the various claims to which we have referred in the preceding paragraph.

The claims

4. A full and detailed evaluation of the claims would involve the following principal steps:
- (a) identifying each and every potential claim;
 - (b) assessing the factual background to each such claim;
 - (c) applying English principles of the conflicts of laws in order to determine the system of law which the English courts would apply if called upon to determine each such claim;
 - (d) considering the merits of each such claim by reference to English substantive law (if applicable), including such defences as sovereign immunity;
 - (e) considering the merits of each such claim by reference to any relevant foreign law;

- (f) considering in relation to each such claim matters of jurisdiction, including the application of Rules of the Supreme Court Order 11, and *forum conveniens*; and
- (g) considering matters of enforcement.

The constraints to which we have already referred, and the further difficulties to which we refer hereafter are such that we have been unable to perform the detailed evaluation which we would have wished. The remainder of this Part sets out the results of those researches which we have been able to complete within the time available to us, and such conclusions as we have been able to reach based upon those researches. The limitations inherent in the views we express will be apparent from the text of this Part itself.

5. "The BCCI Group Claims" referred to in paragraph 2 above which the Principal BCCI Companies agree to release consist, in effect, of all claims except those to recover amounts arising in the proper course of business as shown in the companies' books such as loans, deposits or guarantee liabilities. Part 2 of Schedule 2 identifies specifically releases of the refinancing package entered into in the Financial Support Arrangements and of any liability under the promissory notes. The potential claims which we have been able to identify and which would fall to be released under clause 8(B)(1) of the Contribution Agreement may be listed as follows:

- (A) Fraud and misfeasance;
- (B) The subscription agreement; and
- (C) The (apart from (B)), including the loan assignments, the guarantees and the promissory notes) Financial Support Arrangements.

"The Majority Shareholder Claims" and "the Released Claims" referred to in paragraph 2 above consist, in effect, of the following:

- (D) The Majority Shareholders' claim in respect of US \$2.2 billion.

In addition we consider:

- (E) The indemnity claim; and
- (F) The claims against third parties.

Finally we consider

- (G) Miscellaneous matters.

Litigation considerations

6. Before turning to a detailed consideration of the claims, there are a number of important observations concerning evidential aspects of the claims that require to be stated at the outset:
 - (i) It is apparent from our consideration of the material provided to us for the purposes of this Report that the claims that we have considered have little evidence available to support them. For example, most of the information that we have considered is derived from the various reports prepared by Price Waterhouse. Nothing in these reports is admissible in evidence in an English court of any fact which they set out. Moreover, Price Waterhouse cannot be compelled to assist in the process of rendering anything which has been said to them admissible in the English courts. Further it is particularly unlikely that Price Waterhouse would be prepared to assist in giving evidence on behalf of the BCCI Group in the light of the fact that Price Waterhouse are potential defendants to claims by a number of possible parties.
 - (ii) The dearth of documentary evidence in connection with the claims is likely to prove very difficult to remedy. We understand that many documents are held in the custody of persons from whom their production, notwithstanding the rules of the English court (if it be the appropriate forum), may prove difficult. Moreover, the nature of the

underlying claims, involving as they do allegations of fraud and breach of fiduciary duties are inherently unlikely to be well or clearly documented, thus complicating the task of any prosecution of the claims.

- (iii) There is little prospect of being able to interview and call the evidence of the principal witnesses of fact (mostly from overseas) in relation to the issues that arise in the claims. Moreover, even if some necessary witnesses were prepared to travel from overseas to give evidence before the English court, there must be a realistic possibility that in some instances they would not be permitted by the government of the country in which they reside to leave that country for the purposes of giving evidence. Even if a witness could be persuaded to give evidence to the English court concerning, for example, the events set out in the Price Waterhouse reports, it seems unrealistic to contemplate that such a person would voluntarily make a statement on behalf of the BCCI Group so that he could be called a witness by the BCCI Group. Furthermore, it may well be that any witness could rely on the rule against self-incrimination to justify not answering further questions.
- (iv) It is a rule of English procedure that a party may not properly advance a claim in fraud, or similar misconduct, unless he has sufficient admissible evidence to put a *prima facie* case before the court. It is improper to make allegations of fraud without proper substantiation and in the hope that if enough documents are produced and enough inferences can be drawn the court may lead to the conclusion that there would be "no smoke without fire". This rule could provide a major difficulty in relation to some of the claims, if the evidence presently available is not improved upon. Accordingly for the above reasons, the question whether the Liquidators would be able properly to advance a case against some of the putative defendants involving certain of the allegations considered below and,

if they could, whether those allegations could be proved by admissible evidence is a consideration of paramount importance.

7. The complexity of the likely litigation will be very considerable. The multi-jurisdictional nature of the claims, involving the consideration of the laws of numerous civil and common law jurisdictions, will involve protracted litigation over many years. This litigation will involve considerations such as forum shopping, a detailed consideration of the comparative merits and demerits of numerous jurisdictions and an attempt, finally, to evaluate which system or combination of systems of law will provide the most certain and beneficial result. Given the variety of jurisdictions involved and the necessary interaction of a number of legal systems any outcome of the litigation will inevitably be very difficult to evaluate to any degree of certainty.
8. From the preceding paragraph it will be apparent, if it is not already abundantly clear, that the costs in terms of accounting, legal and other expert assistance in the prosecution or defence of the prospective claims will prove immense. They are also likely to continue for many years.

Evaluation of the claims

9. We below set out an attempted analysis of the claims. Regrettably, however, this evaluation has largely proved inconclusive. It has so proved for the following reasons:
 - (i) The evidential material available to us have been, as explained above, of little value in undertaking a thorough analysis;
 - (ii) A number of the foreign jurisdictions with which we are concerned have a limited number of lawyers ready and able to give the specialist and expert advice relative to the issues necessary to be examined;

- (iii) In the limited time permitted us we have received little qualitative foreign law advice which is of critical importance to the evaluation of the claims; and
- (iv) The issues are complex and expert evidence - particularly in the legal, banking and accounting spheres (in a number of jurisdictions) - will undoubtedly be required in a more thorough analysis.

A FRAUD AND MISFEASANCE CLAIMS

1 Factual background

10 In their draft report to the Bank of England under section 41 of the Banking Act 1977 dated 22nd June 1991, Price Waterhouse identified numerous respects in which the affairs of BCCI Group and their affiliates had been conducted fraudulently. For convenience, we set out below a synopsis of the types of fraud identified by Price Waterhouse, although we anticipate that those reading this report will already have had access to a complete or a redacted copy of the section 41 report itself. So far as the status of the draft report is concerned, we note that in paragraph 10 of his affidavit sworn on 29th July 1991, Mr Cowan of Price Waterhouse commented as follows:

"It has to be appreciated that the Draft Report of 22nd June 1991 was based upon incomplete information, that many details and their interrelationship had not been corroborated or verified, and that Price Waterhouse UK cannot give unqualified support to the detail provided in the Draft Report, nor can we confirm its completeness. However, the documents which either I or those working under me have read and the enquiries which either I or those working under me have carried out have revealed widespread fraud and manipulation of accounting records conducted in collusion with major customers of the group and certain recorded shareholders of Holdings, and the Draft Report reflects the general scale and complexity of the deception and falsification which undoubtedly took place over many years."

11 In preparing that report, Price Waterhouse had access to the books and accounts of BCCI and other associated companies, including the previously secret files maintained by Mr Naqvi. They also had the opportunity to interview officials of the bank over a period of time prior to the moves by the regulatory authorities in early July 1991. Moreover, Price Waterhouse

had the benefit of many years' acquaintance with the affairs of BCCI companies. Accordingly, in the short period available to us in preparing this report, it has not proved possible for us to test or question the conclusions reached by Price Waterhouse. A list of the documents made available to us and dates on which they were received are set out in Appendix 1.2 to this report. We have had to assume, for the purposes of this report, that the assertions in the draft section 41 report can in substance be substantiated.

Synopsis of wrongful conduct identified by Price Waterhouse

- 12 These fall, as they have been described by Price Waterhouse, under the following headings:

Treasury frauds and fraudulent fund routing

- Misappropriation of funds deposited by prominent people and BCCI shareholders by BCCI officers.
- Fictitious loans drawn down in the names of third parties, without their knowledge.
- Unrecorded deposits, to avoid the need for provisions.
- Concealment by the Central Treasury of losses and manufacture of profits by "unorthodox means".
- Concealment by the Central Treasury of the pre-1986 unorthodox accounting.
- Misapplication of funds of ICIC under the control of BCCI management.
- Misapplication of third party funds placed under management by ICIC entities.

- Bogus refreshing of delinquent accounts.
- Unrecorded borrowings through third party banks and investment institutions.
- Artificially generated transactions on customer accounts either not entered in ledger or inadequately recorded.
- Market transactions (commodities, futures and options) carried out ostensibly for particular clients, but in reality for the account of BCCI.
- Booking losses on market transactions against clients to conceal the bank's loss position.
- Misappropriation of deposits without customers' knowledge to adjust non-performing and bogus loan accounts and treasury losses.
- Sale of certificates of deposit without the knowledge of the depositors.
- Routing of funds so as to make adjustments prior to accounting reference dates and audit confirmation dates and which were subsequently reversed.
- The use of accounts in the name of a bank officer to fund adjustments by the Central Treasury.
- Dealings by the Central Treasury with brokers otherwise than at arms length.
- Misuse of placements in Islamic Banking transactions as security.

Share and Capital Note transactions

- Purchase of own shares through nominees by means of loans from BCCI and ICIC and accounts under the control of bank officers.
- Buy-back arrangements for acquisition of own shares.
- Use of underlying value in CCAH shareholdings to increase loans in the names of nominees.
- Misappropriation of substantial funds deposited for investment in BCCI shares. The creation of a fictitious loan on "repayment".
- Acquisition by certain favoured shareholders of shares with guaranteed rates of return and subject to buy-back agreements.
- Side agreements entered into in conjunction with the issue of capital notes making the notes repayable on demand.
- Loans granted by BCCI and affiliated companies to prominent Middle Eastern individuals in order for them to subscribe for shares in CCAH with an indemnity against loss, granted usually by ICIC.

Possible fraudulent benefits to customers

- Hold-harmless agreements with major customers.
- Non-recourse loans to major customers.

Supply of false information to auditors

- Collusion with major customers to supply false confirmations to auditors.

Possible bribery and blackmail

- The payment to a former bank official of \$32 million following his departure from BCCI in 1988.

Chronology

13 For the sake of convenience, we now set out a brief chronology of events.

1972	BCCI SA incorporated in Luxembourg. Using funds from BOA, ICIC Foundation and the Ruler of Abu Dhabi.
1974	Current structure of BCCI i.e. BCCI Holdings, the main holding company with two main subsidiaries BCCI SA (a Luxembourg company) and BCCI Overseas (a Cayman Islands Company) established.
1980	BOA sells its 30% shareholding to ICIC Foundation. BOA provides loan for purchase with funds from subsequent sale of shares as basis of repayment. DPA portfolio set up with ICIC Overseas.
1985	Huge losses incurred in BCCI's Treasury Division (legally part of BCCI (Overseas). This division transferred to Abu Dhabi in 1987. Zia Akbar responsible for losses which he disguised by tampering with funds flowing to Treasury.

- 1986 Ernst & Whinney (auditors for BCCI Holdings) write to their clients complaining about excessive management power and weakness of BCCI's accounting controls. Mr. Abedi discovers Treasury losses (which need \$1.3 billion to redress) and obtains \$150m by selling BCCI Staff Benefit Fund shareholding at \$40 per share to Crescent Holdings and Shaikh Zayed, and asking Shaikh Khalid Mafouz to take at 20% shareholding.
- 1986 BCCI's Treasury Division losses (see 1985 above) revealed to Bank of England.
- Price Waterhouse appointed sole auditor of whole of the BCCI Group accounts.
- 1987 Establishment of International College of Regulators for BCCI agreed. BCCI, as licensed deposit taker recognised under 1979 Banking Act, is automatically authorised under 1987 Banking Act.
- Nov 1987 Price Waterhouse express concerns to BCCI Audit Committee about levels of indebtedness of CCAH, Gokal, Pharaon, Zayed, Adham & Khalil. Price Waterhouse also note that CCAH, Pharaon & Khalil were not paying interest and loans to Gokal were approved in an amateurish way.
- BCCI Holdings recapitalised by the issue of \$15m of preference shares to HE Sheik Hamdan bin Mohammed Al-Nahyan and Masriq, and a subordinated loan of \$30m.

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- 1988 Subordinated loan referred to above increased by \$15m. Mr Abedi has heart attack and Mr Naqvi becomes Chief Executive Officer.
- June 1988 First Meeting of College of Regulators.
- Oct 1988 Drug indictment against BCCI (relating to Tampa branch) issued in US. BCCI's UK management sets up investigation. Bank of England kept informed.
- Nov 1989 Price Waterhouse comment in a draft report on ICIC that certain UAE royal families have provided some capital support to protect their private banking arrangements but not certain if this was to continue.
- Price Waterhouse report that exposure to certain loans has increased by \$294m since 31.12.88, the principal debtors being CCAH, Gokal, Adham, Pharaon, Government of Sharjah and Central Bank of Nigeria.
- Jan 1990 Bank of England institutes formal review of UK operations of BCCI in respect of drug money laundering.
- Early 1990 Bank of England becomes aware of terrorist finance accounts at BCCI.
- Mar 1990 Section 39 report commissioned by Bank of England from Price Waterhouse on adequacy of BCCI's accounting systems to detect drug money laundering.

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Evidence of poor banking emerges from Price Waterhouse's work on BCCI's 1989 report and accounts.

Under pressure from Price Waterhouse, CEO of BCCI (Naqvi) sets up Task Force to review bad loans and related transactions, Price Waterhouse prepare a briefing note dated 14 March for Task Force.

Apr 1990

Task Force report, on 18.04.90 Price Waterhouse write to the Board of BCCI Holdings highlighting problems and explaining they cannot produce unqualified accounts without substantial financial support to Group.

On 20.04.90, Mr Al Mazrui produces a letter to the International College of Regulators confirming that the Abu Dhabi Parties would provide \$400m cash injection and further \$800m through acquisition of shares (mainly those held by nominees and Mafouz). This acquisition increases their shareholding to 77.10%.

On 30.04.90 College of Regulators meets. Still not satisfied by current provisions, wants \$600m. Reported to College that in-house reorganisation committee has been set up to reorganise BCCI. Headquarters to be moved to Abu Dhabi.

Between March/April 1990, Mr Naqvi (CEO of BCCI Holdings enters into correspondence with Abu Dhabi Government setting out problems and possible solutions.

30 Jun 1990	Luxembourg gives BCCI a year to cease its operations and move elsewhere.
Jun 1990	Price Waterhouse's section 39 report shows BCCI's systems and controls are satisfactory.
Oct 1990	Follow up to Price Waterhouse's April report shows need for additional financial support of \$1.5bn needed to cover potential losses. Said previous management may have colluded with customers to misstate transactions. Abu Dhabi Parties agree to meet liabilities and make management changes. Messrs Naqvi and Abedi step down. Two investigative committees set up by the Majority Shareholders consisting of Price Waterhouse and Ernst & Young personnel.
Nov 1990	Board Minutes show evidence of existence of a "Shareholders Management Committee", the Board of BCCI Overseas with Mr Al Mazrui's consent approve questionable loans.
Dec 1990	In last week of December, BCCI executive tells Price Waterhouse \$600m of unrecorded deposits.
Jan 1991	In first week of January, Bank of England is told of these unrecorded deposits. Abu Dhabi agrees to make good any shortfall in respect of these deposits. Price Waterhouse informs Bank of England that some irregular transactions may have gone through UK branches and investigates, keeping Bank informed.
4 Mar 1991	Price Waterhouse commissioned to investigate BCCI under section 41 of Banking Act.

- 21 Mar 1991 The UAE Finance Department write to the Bank of England giving assurances regarding the unrecorded deposits.
- 22 May 1991 Financial package signed by BCCI's shareholders pursuant to a restructuring begun in March/April 1990.
- 24 Jun 1991 Bank of England receives Price Waterhouse's draft Section 41 report. Report reveals "massive and widespread fraud" going back a number of years and involving not only past but existing management, even after the reconstruction. Uses evidence provided by Naqvi's 6,000 personnel files, previously concealed from Price Waterhouse.
- 2 Jul 1991 College of Regulators meets. Abu Dhabi not informed.
- 5 Jul 1991 Co-ordinated closure of BCCI.

Potential Abu Dhabi Defendants considered

14 The Majority Shareholders

For the purpose of this part of the report, we have considered the claims which the BCCI companies might have against the Majority Shareholders. We do not distinguish between the Majority Shareholders, other than for the purposes of sovereign immunity and jurisdiction.

15 **The "Related Persons"**

In view of the structuring of the proposed settlement, it would have been appropriate also to consider the potential liability to BCCI of each of the persons defined as "Related Persons" in the settlement documentation. In view of time constraints and our inability to gain access to all relevant documents, we have been unable to perform this exercise. Various relatives of the Abu Dhabi Ruling family (both by blood and by marriage) are included in the definition of Related Persons. We have no means of knowing who falls within this group.

Liability of Directors and Shareholders - Price Waterhouse's conclusions

- 16 In their draft section 41 Report, Price Waterhouse reached the following conclusions regarding the knowledge of directors and the Majority Shareholders:

"Directors

In the light of the scale and complexity of the deception it is difficult not to conclude that the board failed to discharge its responsibilities properly. Nevertheless, there is no indication, with the possible exception of Robin that the present board of directors was aware of the major irregularities within the bank and it is clear that it has been consistently provided with misleading and inaccurate financial and other information. The board had not been informed of the hold harmless or nominee arrangements, or the bank's and its management's true relationship with a number of major customers and shareholders.

Purple Poppy was a director from 1986 to 1988 and is implicated in irregular transactions relating to the purchase of his own shares in BCCI and CCAH.

All major loans had to be approved by the board, but it appears that a significant number of drawdowns went to the board for approval after disbursement of funds and thus effectively avoiding its control. However, there is little evidence that the board took any effective action to limit or reduce the exposure to individual customer groups, or monitor the implementation of the Credit Policy. Limits were often increased after the event without insistence on effective recovery action.

Overall the board appear to have been taken in by and trusted dominant and deceitful management in the form of Sparrow and Starling.

Shareholders

The relationship between Sparrow and latterly Starling with the major shareholders, being the [] goes back a substantial number of years, and has been a very close one. Sparrow and subsequently Starling acted as the personal investment adviser and had his power of attorney. The extent to which Robin was aware of the matters discussed in this report cannot be established. We are, however, informed that Robin and the [] were briefed fully on all the problems in April 1990, notwithstanding that they allowed the 1989 accounts to be finalised in discussions with ourselves and the Regulators without disclosing this information. In addition, up until discussion of our report with the directors and Regulators of 3rd October 1990, Robin contended that the loans for collection by the shareholders which have now been proven to be totally fictitious, were recoverable.

We have discussed with Robin his own accounts with ICIC which show that he received funds in 1986 and earlier from transactions purporting to be dealing in BCCI shares where it now is apparent that he had no risk of loss. He has confirmed that he has benefitted from such transactions arranged by Sparrow and that in April 1990 he informed other senior government officials of his involvement. We are unable to establish the extent to which his position in relation to Sparrow and Starling may have been compromised as a result of these transactions but we have become aware of his confirmation of what has now been revealed to be a fictitious loan in the name of the []. He could not recollect signing the confirmation that was presented to him by Blackbird and suggested to us that his signature might have been forged.

We have also seen circumstantial evidence of a proposed share transaction with [] in 1981 on a guaranteed return basis; and an "out of book" loan from [] in 1988 to finance the [unauthorised] buy back of shares from Purple Poppy".

2 English principles of conflicts of laws

- 17 Should the Liquidator bring proceedings regarding fraud and misfeasance against the Majority Shareholders in the English Courts, principles of English private international law will indicate the substantive legal system by reference to which the case will be decided. Different aspects of the case may be governed by different laws. Here we examine the potential areas of liability in order to consider which system of law may be relevant to each claim:

The Statutory claims

- 18 In the following part, we consider three Statutory claims which can arise in the course of the winding up of a company in England. Briefly summarised they are as follows:

Fraudulent trading

Where a company's business has been carried on with intent to defraud or for a fraudulent purpose, the Court can order knowing parties to contribute to the company's assets on liquidation.

Wrongful trading

Where a director or a "shadow director" fails to take steps to minimise loss to creditors and he knows or ought to know that the company is likely to go into liquidation, he may be required to contribute to the company's assets on liquidation.

Misfeasance and breach of duty

Where an officer of a company has misapplied corporate assets or become accountable to the company for assets or has breached his duty as an officer, he can be ordered to account for or contribute in respect of those matters on liquidation.

In respect of these three statutory claims it is our view that no conflicts of laws questions arise. In respect of an English liquidation, even of a foreign company, only English law can apply to these issues.

The Common law claims

- 19 In the following parts, we also consider two claims which arise under common law in England, namely:

Fraud, deceit and fraudulent misrepresentation

Where a person (whether personally or having vicarious responsibility for the acts of another) deliberately or recklessly misleads or defrauds another, he is liable to the "innocent person" in respect of the loss caused.

Conspiracy

Where two or more people conspire to do an unlawful act or a lawful act unlawfully, they may be liable to the injured party in respect of loss caused.

When a tort is committed in England, English private international law determines that English law is applied, even when all parties are foreign citizens resident abroad. Whether an act done in a foreign country is or is not actionable as a tort depends upon whether:

- (i) (a) it is a tort according to the law of the country where it was done (*lex loci delicti commissi*), and
 - (b) whether it is a tort according to the law of England (*lex fori*).
- (ii) Or, in exceptional circumstances, whether it is a tort by the law of another country if this has the most significant relationship with the occurrence and the parties.

A problem arises if it cannot be said with certainty that the alleged tort was committed in a particular country, that is, if some facts occurred in one country and some in another. This is likely to be the case here. If the matter comes before an English Court, we believe that the Court will apply English Law to determine which connecting factors are relevant and what they should be taken to indicate. The recent tendency in England has been

to look at the sequence of events constituting the tort and ask "where in substance did the cause of action arise?"

Claims in Equity

- 20 Finally, in the following part, we consider claims based on or resulting from breach of fiduciary duty by the directors of a company. For English conflicts of laws purposes, we think it probable that the law of the place of incorporation of a foreign company will be applied to determine the nature of the duties imposed upon directors of such a company.

For conflicts of laws purposes it is probable that, constructive trust claims, tracing claims and an obligation on a fiduciary to account for profits are to be regarded as within the subject of Restitution. If this is the case, they will be governed by the proper law of the obligation, which if it arises other than in connection with a contract or land, will be the law of the country where the enrichment occurs.

3. Liability under English substantive law

- 21 We now examine in more detail the potential grounds of action to which we have just referred.

Fraudulent Trading

Legal Principles

- 22 Under section 213 Insolvency Act 1986, if in the course of the winding up of a company it appears that any business of the company has been carried on with the intent to defraud the creditors of the company or creditors of any other person, or for any fraudulent purpose then the court, on the application of the liquidator, may declare any persons who are knowingly parties to the carrying on of the business in that manner as liable to make such contributions (if any) to the company's assets as the court thinks proper.

Where a person deliberately refrains from making enquiries the results of which he might not care to have, this constitutes in law actual knowledge of the facts in question. However, it is probable that mere neglect to ascertain what could have been found out by making reasonable enquiries is not tantamount to knowledge. Furthermore, there is recent high authority for the proposition that it is fraudulent to make an untrue statement as to the present affairs of a company even though it is made in the honest belief that to make the statement is in the best interests of the company or to third persons.

Application to present facts

- 23 On the assumption that there will be little difficulty in demonstrating that the business of the BCCI Group has been carried on with the intent to defraud creditors, the principal difficulty in establishing liability against the Majority Shareholders will be in showing that they were knowingly parties to the carrying on of the business in that manner.

Direct personal knowledge of the Majority Shareholders

- 24 The evidence which we have seen which might suggest direct personal knowledge on the part of the Majority Shareholders may be summarised as follows:

- We understand that a meeting took place between Mr Abedi, Mr Naqvi and Shaikh Khalifa in March 1990. We understand that at that meeting, although no exact figures were then known, the Majority Shareholders were *"fully apprised of the disastrous situation and the underlying fraudulent transactions"* (Minutes of 29th meeting of the Audit Committee of 1st March 1991). We have seen no primary documentary evidence supporting suggestions that the Majority Shareholders had any earlier knowledge of the corruption within the BCCI Group. Indeed, we have seen no primary evidence of the March 1990 meeting itself.

- In the draft section 41 Report it is stated that Mr Al Mazrui, the Government of Abu Dhabi representative on the BCCI board, and the Government of Abu Dhabi were fully briefed on the problems in April 1990. No source is stated for this information. This briefing is also referred in the minutes of a meeting of the Audit Committee of 1st March 1991 referred to above. According to the minutes, Price Waterhouse informed the Committee that the briefing had been given by Mr Abedi and Mr Naqvi to Shaikh Khalifa.
- Mr Al Mazrui, according to Price Waterhouse, admitted that he had benefitted from "no risk" transactions in which he purchased BCCI Group shares. Such transactions, including the manipulation of the BCCI Group share price, were clearly fraudulent. Mr Al Mazrui apparently informed other Government officials of his involvement in April 1990.
- Mr Al Mazrui, according to Price Waterhouse, confirmed a fictitious loan in the name of Shaikh Khalifa. However, we note that Shaikh Khalifa has denied knowledge of this loan.
- There appears to be evidence that ADIA was involved in a proposed "no risk" share transaction in 1981 and in an "out of book" loan in 1988 to finance the buy-back of shares from Shaikh Khalid Bin Mahfouz.
- We have seen notes taken by Price Waterhouse personnel of interviews with Mr. Naqvi in January and February 1991. Most of the details relating to the assigned loans were revealed in these interviews.
- The structure of the Financial Support Arrangements as discussed in paragraph 79 *et seq* below.

- After March 1990, we understand that the Majority Shareholders started to take a far more direct and active role in overseeing the management of the BCCI Group.

25 By way of answer it will doubtless be argued that it is inherently unlikely that the Majority Shareholders would have repeatedly provided very substantial funds to the BCCI Group had they had direct personal knowledge that the business of the BCCI Group was being carried on with intent to defraud creditors.

Knowledge imputed to the Ruling Family

26 We understand that Mr Al Mazrui has, at all material times, been an official within the Shaikh Zayed's Department of Private Affairs. He had a seat on the board of BCCI Holdings, BCCI SA and BCCI Overseas from 26th January 1982 onwards. As far as we are aware, Mr Al Mazrui's seat on the boards was held by virtue of that position given that the Majority Shareholders held a stake of no less than 20% in certain BCCI companies throughout the period. We have considered whether it might be possible to impute to the Majority Shareholders the necessary elements of fraudulent trading if the necessary state of mind could be established against Mr Al Mazrui himself.

27 So far as actual knowledge on the part of Mr Al Mazrui is concerned, we assume that he would have been fully apprised of the discussions at (or if he was not present, shortly after) the March 1990 meeting. Therefore, by 2nd November 1990, he presumably had a reasonably clear view of the types of activity in which BCCI had been engaged. On that day, a board meeting of BCCI Overseas considered revised credit line proposals relating to advances made by the Cayman branch. Further credit was extended to various customers whose ability to repay must seriously have been in doubt. However, as a general proposition, it seems that the board generally had little control over the affairs of the BCCI Group.

- 28 We also refer to the summary in paragraph 12 above in which we have mentioned various episodes in which Mr Al Mazrui appears to have been personally involved.
- 29 In paragraph 1.29 of their report, Price Waterhouse state that Mr Al Mazrui may be an exception to their general proposition that the then present board of directors was unaware of major irregularities. We have seen no documentary evidence which explains why Price Waterhouse took this view.
- 30 Mr Al Mazrui himself might in principle be liable under section 213 if he had actual knowledge of the way in which the affairs of the BCCI Group were being fraudulently mismanaged, or if he shut his eyes to the obvious and was reckless as to whether the affairs of the BCCI Group were being fraudulently mismanaged or not. Again we have not seen any sufficiently clear evidence to enable us to reach a conclusion on this point.
- 31 Turning however to the Majority Shareholders, unlike section 214 which we mention next, there is no provision relevant to fraudulent trading applying to "shadow directors". We do not consider that common law notions of vicarious liability can have any application to fraudulent trading under the Insolvency Act and so we see no means by which Mr Al Mazrui's knowledge (if any) can be imputed to the Majority Shareholders if they did not have actual knowledge within section 213.

Financial Consequences

- 32 The remedy for fraudulent trading provided by section 213 of the Insolvency Act in that the court may order the persons liable to *"make such contributions (if any) to the company's assets as the court thinks proper"*. The way in which the Court would exercise its discretion will depend on the facts in each case. In some cases the Court has awarded a punitive as well as compensatory element especially if on the evidence there was no doubt that the "persons liable" had intended to defraud the creditors. We cannot

usefully make any comment on the level of contribution which could be in issue on the facts of this case.

Wrongful Trading

Legal Principles

- 33 Section 214 of the Insolvency Act 1986 enables a court to declare a director or shadow director of a company liable to make a contribution to the assets of the company in the course of the winding up of the company if it appears that
- the company has gone into insolvent liquidation;
 - that at sometime, before the commencement of the winding up of the company, the director knew or ought to have known that there was no reasonable prospect that the company could avoid going into insolvent liquidation, and
 - he did not take the steps he ought to have taken to minimise the potential loss to the company's creditors.
- 34 Section 214(7) specifically provides that a director includes a shadow director. Section 251 defines "shadow director" in relation to a company as a person in accordance with whose directions or instructions the directors of a company are accustomed to act. Under current legal thinking, there is a view that in appropriate cases a controlling shareholder or a person whose nominee director carries out his instructions could be a "shadow director" if he is considered to be interfering too regularly in the day to day management of the company. Although the question is as yet undecided, it would seem that it is arguable that a majority shareholder who interferes to any substantial degree in the affairs of a company in liquidation, could be regarded as a shadow director.

Application to present facts

- 35 If it can be said that Mr Al Mazrui knew or ought to have known that there was no reasonable prospect that the BCCI companies of which he was director could avoid going into insolvent liquidation and yet he took insufficient steps to minimise the potential loss to creditors, then he would be liable to make a contribution to the assets of the companies in the course of their liquidation.
- 36 Mr Al Mazrui would have a defence if he could show that a minimum of care and skill was employed in using every step possible to minimise potential losses to creditors. We do not know what Mr Al Mazrui's personal qualifications in terms of financial affairs might be, but if he was highly experienced in financial management, more than minimum care and skill would be required of him.
- 37 So far as the Majority Shareholders are concerned, it seems to us that by virtue of Mr Al Mazrui's close relationship with Shaikh Zayed and/or of the more active role taken by the Majority Shareholders from March 1990 onwards, it is at least possible that the Majority Shareholders were shadow directors and as such subject to section 214. Again, however, liability on the part of Mr Al Mazrui would not of itself suffice to render the Majority Shareholders liable; it would be necessary to establish that the Majority Shareholders themselves satisfied the criteria under the section.
- 38 The belief (or lack of it) in the prospect of avoiding insolvent liquidation has to be considered in the light of the Majority Shareholder's willingness to restore the capital base of the BCCI Group. It would no doubt be argued on behalf of the Majority Shareholders (see Mr Al Mazrui's Affidavit sworn on 22nd July 1991) that they believed at all material times that the companies would avoid insolvent liquidation by reason of these actual and intended cash injections and that it was only the actions of the various regulatory authorities in closing the bank down which drove it into insolvent liquidation at all.

Financial Consequences

- 39 As regards the remedy available under section 214, the section is primarily compensatory rather than penal. It would seem that the appropriate amount the director or shadow director will be declared liable to contribute is the amount by which the company's assets are reduced by his conduct, i.e. from the time he knew or ought to have known there was no reasonable prospect of being unable to avoid insolvent liquidation. However the discretion is very wide and the court can take account many factors, for example, any deliberate wrongdoing.

Misfeasance and Breach of Duty

Legal Principles

- 40 Section 212 Insolvency Act 1986 applies to any person who is or has been an officer of the company, or who has been concerned in the promotion, formation or management of the company. If in the course of the winding up of a company it appears that such person has misapplied corporate assets or become accountable to the company for such assets or has been guilty of any misfeasance or breach of duty regarding the company then an application can be made to the Court against that person. Under section 212(3) the Court may order such a person to repay, restore or account for corporate assets or contribute to the company's assets by way of compensation for misfeasance or breach of duty such sum as the court thinks just. Misfeasance in the context of section 212 does not necessarily involve moral turpitude but covers any breach of duty by an officer of the company which involves mis-application or wrongful retention of a company's moneys and can be brought against a *de facto* director in the same way as a *de jure* director. The section creates no independent liabilities, but only provides a procedure for recovery of compensation on a winding up.

Application to present facts

- 41 Since this section does not create any independent liabilities, the ability of the English court to proceed against the Majority Shareholders under this section must depend on the Majority Shareholders being liable under one of the heads discussed elsewhere in this report.

Financial Consequences

- 42 The remedy provided by section 212 of the Insolvency Act is that the court can compel a person who falls within its terms:

"to repay, restore or account for the money or property or any part of it, with interest at such rate as the court thinks just, or to contribute such sum to the company's assets by way of compensation in respect of the misfeasance or breach of fiduciary or other duty as the court thinks just".

Fraud, deceit and fraudulent misrepresentation

- 43 In English law, fraud can give rise to a number of types of claim at common law. As matters presently stand, however, we have not seen sufficient evidence to analyse any such potential claims in any useful fashion.

Conspiracy to Defraud

Legal Principles

- 44 A civil conspiracy consists of the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. If the conspirators have a primary purpose of protecting their own legitimate interests, but there is an intent to injure the "innocent party" and unlawful means are used, their conduct may still be tortious.

Application to present facts

- 45 There seems to be little doubt that officers of the bank were engaged in conspiracy to defraud and that third parties were, in certain instances, also party to the conspiracies. To date, we have seen nothing which enables us to advise whether the Majority Shareholders have been party to any conspiracy. We understand that the Liquidator of BCCI Overseas has issued proceedings in England against eight companies in respect of conspiracy to defraud between 1984 and 1991. None of the defendants to those proceedings are the Majority Shareholders or, so far as we are aware, Related Persons.

Financial Consequences

- 46 The damages recoverable will be the loss suffered by the company as a result of the conspiracy, which, in this case, could obviously be substantial.

Breach of fiduciary duty**Legal Principles****Directors**

- 47 The directors of a company owe fiduciary duties to the company. Directors have to ensure that they have properly delegated the duty of investing funds of the company and attending to the securities in which they are invested. In addition they are bound to see that the funds of the company are in a proper state of investment. A director must account to the company for all of the company's property in his control. He is liable also to the company for any unauthorised profits made by him by virtue of his office. This rule is absolute and independent of any question of fraud or absence of good faith. Where directors expend the property of the company in a manner which is *ultra vires* the company can recoup any loss from the directors. If the directors occasion damage to the company by negligence they may be

liable to the extent of the damage caused. Proceedings may be taken in the winding up of the company against the directors including proceedings for breach of duty.

The Majority Shareholders

- 48 Third persons, who have benefitted from a director's breach of fiduciary duty may themselves be liable to the company, for instance if they have received the company's property (other than as *bona fide* purchasers for value without notice of the breach of duty). If they have participated in the director's breach of fiduciary duty, they may themselves be liable as constructive trustees.

Application to present facts

- 49 It may be that the BCCI companies of which Mr Al Mazrui was a director might have claims against him for breach of the fiduciary duty. Again, however, we have not seen sufficient evidence to enable us to advise whether the Majority Shareholders could be liable to the company, on any of the bases discussed in the preceeding paragraph.

Sovereign immunity

- 50 For the reasons given in paragraph 170 *et seq* below, we consider that a defence of sovereign immunity will not avail any of the Majority Shareholders in respect of any of the claims discussed under this head.

4. Liability under foreign law

- 51 Regrettably, in the time available we have not managed to obtain satisfactory legal advice on any of the claims discussed under this head either from Luxembourg, the Cayman Islands or the United States.

2. Jurisdiction and *forum conveniens*

Jurisdiction

- 52 We now consider, in relation to each of the three categories of claims discussed above the ability of the English Court to exercise jurisdiction over the Majority Shareholders.

The Statutory Claims

- 53 In relation to sections 212, 213 and 214 Insolvency Act 1986, the Court has power, by virtue of rule 12.12 Insolvency Rules 1986 to grant leave to serve process on persons outside the jurisdiction.

The Common Law Claims

- 54 Whether the English Court would accept jurisdiction in respect of a potential claim in tort is dictated by whether the English Court would allow a Writ of Summons to be served on the Majority Shareholders. The ADIA (an overseas corporate entity established by Statute in Abu Dhabi), has an office at 99, Bishopsgate, London EC2M 3XD. RSC Order 65, rule 3(12) states that a foreign corporation can be sued in England if, at the time of service of the writ, it is "resident" in England, and if service is duly made on its agent, the head officer. Such a corporation is deemed to be "resident" in this country if it is conducting its business, or a material part of it at some fixed place in this country. On the assumption that the ADIA is deemed to be resident in this sense, it could be served with English proceedings without the leave of the English court. In these circumstances it would be possible for the court to grant leave to serve English proceedings on the other Majority Shareholders out of the jurisdiction on the basis that they were "*necessary or proper parties*" within the meaning of RSC Order 11 rule 1(1)(c).

Claims in Equity

- 55 We consider that the position will be the same as that in relation to the Common Law claims.

Forum Conveniens

- 56 The rules governing *forum conveniens* must be read in the light of the overriding consideration that the English Court will not accept jurisdiction where some other forum is more suitable for the interests of all the parties and for the interests of justice. We take the view that if the English Court was in a position to exercise jurisdiction over the Majority Shareholders, whether by virtue of RSC Order 11 or otherwise, it would not decline such jurisdiction on the grounds of *forum conveniens*.

6 Enforcement

- 57 This is dealt with at paragraphs 188 *et seq* below.

7 Conclusion

- 58 There are indications in the documents which we have read which suggest that the Liquidator may be able to bring claims against Mr Al Mazrui in England based on fraudulent trading. In the limited time available to us and on the limited relevant information to which we have had access we are currently unable to express any opinion upon the likelihood or otherwise of any claims under this head being successfully brought against the Majority Shareholders.

• **THE SUBSCRIPTION AGREEMENT**

1. **Factual background**

59 The next claim we consider is the possibility of a civil claim being brought by the CFC Liquidators against the Government of Abu Dhabi. We appreciate that CFC is a subsidiary of BCCI Holdings, not of BCCI SA. We understand BCCI Holdings not to be in liquidation in England. However, a successful claim by CFC would increase the assets of CFC and thereby of BCCI Holdings, and by virtue of the proposed Pooling Agreement (if implemented), such increase in the assets of BCCI Holdings would inure to the benefit of the creditors of BCCI SA.

60 For the purposes of this exercise we have assumed that the CFC winding up petition, adjourned until 16th December 1991, the Consent Order of 3rd September 1991 has been proceeded with and that CFC is in liquidation pursuant to Cayman Islands law. The potential claim is in essence a claim for breach of contract for US\$650,000,000, such sum representing unpaid consideration for Preference Shares in CFC pursuant to the terms of a Subscription Agreement dated 7th June 1991 ("the Subscription Agreement"). The Subscription Agreement was entered into as part of the general restructuring package of BCCI Group whereby funds were injected into CFC. We have set out below a summary of the pertinent facts and legal and commercial implications that follow in assessing this potential claim.

61 CFC is a company incorporated in the Cayman Islands on 11th August 1976. The company was granted a category "B" banking licence on 25th August 1976. The company has an ordinary share capital of US\$20,000,000 comprising some 2,000,000 shares of US\$10 each. In addition there is a preference shareholding of UAE Dirhams 2,500,000,000 comprising 25,000,000 non cumulative 12% Preference Shares of UAE Dirhams 100 each. CFC is a separate corporate entity although its affairs are, to quote the Deloitte Ross Tohmatsu report of 13th December 1991 "inextricably

intertwined with those of BCCI Overseas. CFC is, together with BCCI Overseas, a wholly owned subsidiary of BCCI Holdings.

- 62 CFC's status and function within the BCCI hierarchy is not particularly clear, but reference to the Cayman Islands Inspector of Banking's affidavit in support of the winding up petition of, *inter alia*, CFC dated 22nd July 1991 suggests that CFC was a specialist banking company. The annual reports and accounts we have seen together with the Memorandum and Articles confirm that CFC in effect undertook merchant banking activities and advised on and co-ordinated the investment activities of the BCCI Group members. In that regard we have seen a letter from BCCI Holdings to CFC dated May 14th, 1990 granting a full indemnity to CFC in respect of its credit operations.
- 63 There is very little evidence available to illustrate the credit facility arrangements CFC purportedly entered into, but the Price Waterhouse report of 2nd April 1990 highlights a CFC loan of US\$13.7m to Prince International Holdings Ltd as at 31st December 1989. Prince International Holdings Ltd was established as part of a restructuring programme designed to reduce the debt burden of another BCCI Group company, IMC Ltd, by the injection of additional equity capital.
- 64 Copies of the few CFC Board Minutes that have been made available to us indicate that the directors of CFC, as at March 1991, were as follows:
- Peter Kandish
Roger Aylen
Bande Hasan (Managing Director)
Saadat Siddiqi
- 65 The possibility of an issue of Preference Shares was canvassed by the CFC Board on 7th March 1991, the purpose apparently being to raise funds to satisfy certain capital adequacy requirements that had been imposed on it. Apparently this course of action had in principle been approved by the

Inspector of Banks of the Cayman Islands. Accordingly at a 7th March 1991 Board Meeting a draft Subscription Agreement was proposed. There were however various minor amendments to the subscription in that initially it was proposed that 14,692,000 Non Cumulative 8% Preference Shares be allotted. As at the Board meeting of March 20th 1991 there was a revision in that the Subscription Agreement now referred to a 12% per coupon share and the number of shares to be allotted was now 14,688,000. It is of interest to note that Mr Iqbal, the Chief Executive Office of BCCI Holdings, was at 8th March 1991 authorised and directed on behalf of CFC to execute the Subscription Agreement together with any other ancillary documents required. Indeed reference to CFC Board Minutes of 3rd and 4th March 1991 confirms that he also had approval to authorise the issue of whatever number of Preference Shares he deemed appropriate. A Subscription Agreement was duly executed by CFC and the Government of Abu Dhabi dated 22nd May 1991.

- 66 However at a subsequent CFC Board Meeting on 30th May 1991, it was proposed that there would be an increase in the number of Preference Shares issued by CFC. Accordingly the 22nd May Subscription Agreement was revoked and a new Subscription Agreement was entered into allotting 23,868,000 Non Cumulative 12% Preference Shares each of UAE Dirhams 100 to the Government of Abu Dhabi. That agreement was signed on 7th June 1991; it provided for the law of the Cayman Islands to govern its terms. The financial effect of the revised Subscription Agreement was that the capital injection from the Government of Abu Dhabi increased from approximately US\$400,000,000 to US\$650,000,000. The relevant extracts of the Subscription Agreement are set out below:

3 Conditions

The obligations of the Subscriber contained in this Agreement are conditional upon the representations, warranties and undertakings to be given by the Issuer and contained in clause 5 of this Agreement being true as of the date hereof

and upon the receipt of the following in form and substance satisfactory to the Subscriber on or before the date of issue of the Subscriber Shares :-

- (a) A copy, certified as true and up to date, of the Memorandum and Articles of Association of the Issuer as amended by the Special Resolutions set out in the Schedule;*
- (b) A copy, certified as a true copy, of resolutions of the Board approving the terms of this Agreement authorising appropriate persons to sign and deliver this Agreement on behalf of the Issuer and authorising the allotment and issue of the Subscriber Shares;*
- (c) A copy certified as a true copy of duly passed Special Resolutions of the Issuer in the form set out in the Schedule; and*
- (d) A written confirmation in a form satisfactory to the Subscriber that the Inspector of Banks of the Cayman Islands has agreed that the Subscriber Shares will constitute Tier 1 capital of the Group for Capital adequacy purposes.*

4 Subscription and Issue of Preference Shares

- (B) Forthwith after the execution of this Agreement and subject to the conditions in Clause 3 having been satisfied:*
 - (i) The Subscriber shall credit such bank account with such bank as the Issuer shall previously have notified to the Subscriber with the Subscription Price for the Subscriber Shares to be issued; and*
 - (ii) the Issuer shall deliver to the Subscriber forthwith a Share Certificate in respect of the Subscriber Shares together with a copy, certified by a Director or the Secretary of the Issuer to be*

a true copy, of the Board Resolution authorising such Subscriber Shares to the Subscriber and shall forthwith enter the Subscriber's name in the Issuers' register of members in respect of such Subscriber Shares.

5 *Representations, Warranties and Undertakings*

The Issuer hereby represents warrants and undertakes to the Subscriber (and the Issuer agrees and acknowledges that the Subscriber is entering into this Agreement and subscribing for Subscriber Shares in reliance of such representations, warranties and undertakings) that at the date hereof;

- (i) the Issuer is a company incorporated in the Cayman Islands ... and is validly existing and his corporate power ... to carry on its business;*
- (ii) the Issuer has corporate power to allot and issue the Subscriber Shares in the manner contemplated by this Agreement and otherwise to perform its obligations under this Agreement ... and has taken all necessary action to authorise the execution and delivery of this Agreement by the Issuer ...*
- (iii) no limit on the powers of the Issuer or the Board to issue Subscriber Shares or on the exercise of such powers will be exceeded as a result of the Issue of the Subscriber Shares pursuant to this Agreement and this Agreement will constitute legal valid and binding obligations of the Issuer enforceable in accordance with its terms and is and will be in the proper form for enforcement in the Cayman Islands and subject to any procedural regulations under applicable law.*

- (iv) *the execution, delivery and performance of this Agreement by the Issuer does not and will not violate in respect of any provision of (1) any law or regulation or any order or decree of any governmental authority...*
- (vii) *The issue of the Subscriber Shares under the terms of this Agreement will comply with the Companies Law of the Cayman Islands and all the applicable laws and regulations of the Cayman Islands and elsewhere.*

6. Costs and Expenses

The Issuer shall upon demand pay to the Subscriber ... all legal and other costs, charges and expenses on a full indemnity basis incurred by the Subscriber in connection with the negotiation preparation and execution of this Agreement or otherwise ...

7. Assignment

This Agreement shall be binding upon and enure to the benefit of each party hereto and its respective successors and permitted assigns ...

8. Notices and Miscellaneous

- (B) *Time is of the essence of this Agreement but no failure or delay to exercise any power right or remedy ... shall operate as a waiver thereof... The powers rights and remedies provided in this Agreement are cumulative and not exclusive of any powers, rights or remedies provided by law.*

10. Governing Law

(A) *This Agreement shall be governed by and construed in accordance with Cayman Islands law.*

(B) *The Subscriber submits to the jurisdiction of the Cayman Islands Courts in relation to all matters arising out of this Agreement and irrevocably appoints ... as its agent for the service of process in respect of any action brought against it hereunder"*

- 67 CFC wrote to the Government of Abu Dhabi on 11th June 1991 seeking their confirmation that all conditions precedent outlined in the Subscription Agreement had been fulfilled. It was also confirmed that upon receipt of the subscription price, CFC would forthwith deliver to the Government of Abu Dhabi a share certificate in respect of the Preference Shares. CFC subsequently wrote to the Manager of BCCI Overseas on 18th June 1991 confirming that approximately US\$650,000,000 would shortly be received by them for onward credit to CFC's account with BCCI.
- 68 CFC wrote a further letter to the Government of Abu Dhabi on 25th June 1991 urgently requesting the payment of subscription monies. On 25th June 1991, CFC also wrote to Mr Iqbal, Chief Executive Officer of the BCCI Group, asking him to prevail upon the Government of Abu Dhabi to honour their commitment pursuant to the executed Subscription Agreement.
- 69 On 4th July 1991, the National Bank of Abu Dhabi telexed BCCI Overseas confirming having paid US\$650,000,000 for onward transmission to CFC's account. However, on the following day, the National Bank of Abu Dhabi again telexed BCCI Overseas (at 1852 Abu Dhabi time) stating that they would not be making this payment on remitter's (i.e. the Abu Dhabi's Government) instructions. There is no evidence to suggest that monies were ever received by BCCI Overseas bankers, Security Pacific, who were to be the conduit for these funds.

70 A winding up petition against CFC was subsequently presented by the Attorney General of the Cayman Islands on 22nd July 1991 culminating in a Consent Order dated 3rd September 1991 adjourning the Petition until 16th December 1991. CFC is accordingly in provisional liquidation. BCCI Overseas was also put into provisional liquidation by order of the Cayman Islands' Court on 22nd July 1991.

2. English principles of conflicts of laws

71 In the light of the governing law and exclusive jurisdiction provision in Clause 10 A and B of the Subscription Agreement set out above Cayman Islands law will apply.

3. Liability under English substantive law

72 In the light of the conclusion in the preceding paragraph, English law is *prima facie* inapplicable. However, in all probability Cayman Islands law is likely to be similar to English law and we therefore analyse the Subscription Agreement in accordance with English law.

73 Viewed in isolation this would seem to be a good claim for the recovery from the Government of Abu Dhabi of the US \$650m due, but unpaid, under the Subscription Agreement. Indeed, we note that the Government of Abu Dhabi appears to have given no explanation whatsoever for its cancellation of the remittance instructions confirmed by the National Bank of Abu Dhabi in their telex of 4th July 1991. Furthermore, the Subscription Agreement (as part of the Financial Support Arrangements) was, we assume, made by the Government of Abu Dhabi pursuant to its commitment to indemnify BCCI to which we refer in paragraph 143 below. We would, however, expect the Government of Abu Dhabi to resist a claim on any one of the following grounds, namely:

- (1) that the Subscription Agreement was merely a part of the Financial Support Arrangements which in turn presupposed that the BCCI

Group would continue to function in one form or another and would not be subject to moves by the regulatory authorities which would have the effect of closing the BCCI Group down and rendering the Financial Support Arrangements futile;

- (2) that the Financial Support Arrangements, of which the Subscription Agreement was an integral part, were entered into by the Government of Abu Dhabi upon the basis that the financial support envisaged would be sufficient to deal with the existing difficulties of the BCCI Group and to restore the BCCI Group to financial health; and
- (3) that the Subscription Agreement (and the Financial Support Arrangements) as a whole were tainted by the fraudulent mismanagement of the BCCI Group, which was either wholly unknown to the Government of Abu Dhabi, or of a character and extent different from that known to the Government of Abu Dhabi.

Sovereign Immunity

- 74 For the reasons set out in paragraph 170 *et seq* we do not believe that this defence is available to the Government of Abu Dhabi as a matter of English law.

4. Liability under foreign law

- 75 We have yet to receive proper advice on the law of the Cayman Islands.

5. Jurisdiction and *forum conveniens*

- 76 We see no basis upon which the English Court would be entitled to exercise, or would in its discretion exercise, jurisdiction over the Government of Abu Dhabi in relation to this claim.

6. Enforcement

- 77 The Cayman Islands is a British Dominion covered by the ambit of the Administration of Justice Act 1920, which enables certain judgments of superior courts in such dominions outside the United Kingdom to be registered in the English court with such judgment having the same effect so far as relates to execution as a judgment of the registering court. *Prima facie*, it appears likely that any judgment obtained in the Cayman Islands would be enforceable in the English courts. We also refer to paragraph 188 *et seq* below.

7. Conclusion

- 78 It is clearly speculative, without receipt of Cayman Islands legal advice, to express any definitive answer on the merits of this claim. By way of general overview however, and as a matter of English law, notwithstanding the apparent simplicity of this claim, the possible defences to which we have referred depend upon documentation and evidence to which we have not had access with the result that we are unable to express any view upon its prospects.

C. THE FINANCIAL SUPPORT ARRANGEMENTS

1. Factual background

- 79 This claim arises from promissory notes issued by the Government of Abu Dhabi to BCCI SA and BCCI Overseas, denominated in US Dollars and UAE Dirhams and with an overall value of some US\$3.061 billion, and two guarantees issued by the Government of Abu Dhabi in a total value of US\$750 million. Both the promissory notes and the guarantees were associated with certain Loan Assignments. Of the various claims which we have examined this is perhaps the best documented claim. Nevertheless a caveat must be applied to the effect that a number of factual areas remain unclear.
- 80 The above promissory notes and guarantees were issued pursuant to six Loan Assignment agreements entered into on 22nd May 1991. These were part of the Phase I Sandstorm re-financing transactions. The aim of the Loan Assignment agreements was to transfer identified problem loans from BCCI Group to three Cayman Islands companies incorporated for this purpose. By transferring the problem loans out of BCCI Group and replacing them with promissory notes and guarantees backed by the Government of Abu Dhabi, BCCI Group's balance sheet would be strengthened, the bank returned to solvency and the 1990 accounts could be finalised without extensive qualification.
- 81 It seems that at least some of the problem loans were identified at an internal audit performed by BCCI Group in May 1990. Whether all the problem loans had been clearly identified previously is not clear. However, following the internal audit, it appears that two lists of problem loans were drawn up. The first list related to accounts which were essentially not loans at all, and the second list related to accounts where actual loans had been made but where recovery would be limited. The first list included loans to nominees to buy shareholdings in CCAH and other companies. It also

included loans which were completely fictitious or had been executed for routing purposes.

82 It was initially envisaged that the two lists of loans would be assigned to two Cayman Islands companies. However, as explained below the first list of loans later had to be split between loans associated with CCAH and other loans.

83 In October 1990 BCCI Group appointed an Investigating Committee to examine the problem loans. The Investigating Committee appointed consultants, namely Price Waterhouse and Ernst & Whinney, to assist in the task. During January, February and March 1991 Price Waterhouse held a series of interviews with Mr. Naqvi to attempt to ascertain the position in regard to each of the problem loans.

84 In order to be in a position to transfer problem loans out of the BCCI Group, there were internal group assignments made pursuant to Loan Assignment agreements made on 31st December 1990. These assignments included 5 agreements under which loans were assigned to BCCI Overseas, and one agreement under which a loan, in the sum of US \$2,792,313.49 relating to the Virani Group, was assigned from BCCI Overseas to BCCI SA. The companies assigning to Overseas and the book value of the loans assigned were as follows:-

BCCI Finance International Limited (US \$4,087,000);
 Bank of Credit and Commerce (Emirates) (US \$8,132,000);
 Bank of Credit and Commerce Gibraltar Ltd (US \$8,119,000);
 Credit and Finance Corporation Ltd (US \$251,433,000);
 Bank of Credit and Commerce Hong Kong Ltd (US \$42,781,000).

85 The majority, though not all, of the loans internally assigned were then assigned on as part of the Phase I Sandstorm transactions. The value at which they were assigned on, with two notable exceptions, was generally slightly less than their value on the initial assignments. The two exceptions

relate to one loan which was assigned at a slightly increased value and one loan to the International Medical Corporation, under the Prince/IMC Group account name, which was assigned on at a value of US \$8 million less than it was received. We are uncertain as to the rationale for this.

- 86 Following the internal assignments in December 1990, the problem loans were then assigned on in May 1991. The assignee companies were as follows.

Financial Portfolio (Cayman) Ltd ("Portfolio")

- 87 This company was incorporated as a wholly owned subsidiary of the Government of Abu Dhabi. Pursuant to two Loan Assignment Agreements between (1) Portfolio, BCCI SA and the Government of Abu Dhabi, and (2) Portfolio, BCCI Overseas and the Government Abu Dhabi, the two BCCI companies assigned to Portfolio all loans on their books which related to shareholdings taken in CCAH.
- 88 Through prominent Middle Eastern individuals acting as nominees, BCCI Group had acquired a holding of about 58% in CCAH. BCCI Group interest in CCAH was concealed by portraying the nominee arrangements as loans to those individuals secured on the shares. Such transactions were contrary to the provisions of US regulatory law and it is apparent that during 1990, the Board of Governors of the Federal Reserve System ("FRB") and other banking regulators in the United States became aware of BCCI Group's involvement with CCAH. Negotiations took place between lawyers representing BCCI Group in the United States, Patton, Boggs & Blow, and the FRB, which led to an agreement, enforced by way of Consent Order, that BCCI Group would divest itself of all CCAH shares which it was deemed to control and would cease all banking operations in the United States. The FRB insisted that, whereas they would allow an assignment of the loans to a Cayman company, they would not allow such company to hold other loan assets. As a result, it was resolved by the Boards of BCCI SA

and BCCI Overseas in March 1991 to segregate the CCARI loans and assign these to Portfolio.

- 89 Under the terms of the Loan Assignment agreements, the Government of Abu Dhabi, in consideration of the immediate sub-participation and later assignment of loans from BCCI to Portfolio, agreed to issue promissory notes in favour of BCCI. The value of such promissory notes was effectively the book value as at 29th December 1990 of the loans assigned. However, under the terms of the Loan Assignment agreements, BCCI represented and warranted that there were no circumstances relating to the loans, any credit documents involved, any transactions contemplated by the loans, any of the borrowers or any purpose for which the facilities were made available which involved:

"... any activity which is criminal or illegal in the place in which such activity was carried out and which as a result of the assignment of the relevant Loan Asset (s) to the Assignee (and in the light of the Issuer's shareholder in the Assignee) if they were to be revealed might reasonably be expected to result in the international reputation of the Issuer, or any relationship between the Issuer and the Government of a sovereign state, being materially damaged or harmed."

If such warranty was breached the Government of Abu Dhabi could insist on the loan being re-transferred to BCCI and the value of the loan payable under the promissory notes being withheld from BCCI.

- 90 The agreements were signed on 22nd May 1991 by Mr. Iqbal on behalf of the BCCI, Mr. Al Mazrui on behalf of Portfolio and Mr Al Suweidi on behalf of the Government of Abu Dhabi. The signatures were witnessed by Allen & Overy personnel. It is unclear where the signing took place, though the witnessing of signatures by Allen & Overy personnel indicates it may have been in England.

71 Pursuant to such agreements, the promissory notes, in the amounts agreed, were issued by the Government of Abu Dhabi on 22nd May 1991. The signature on behalf of the Government of Abu Dhabi is believed to be that of Mr Al Suweidi. It would appear that the notes were signed on the same day as the other documents and so the notes may have been delivered to BCCI in England, although the notes actually state that they were "issued in Abu Dhabi". The notes are repayable in 7 equal instalments on 29th December each year with a final instalment payable on 29th June 1988. Interest is payable annually at a rate calculated by a "Rate Agent" with reference to three banks in Abu Dhabi on the dirham notes, and three banks in London on the Dollar notes. The notes are transferable but any transfer must be registered with ADIA who, having authenticated the transfer, is to issue new notes to the transferee. The notes may be prepaid by the Government of Abu Dhabi. Any payment under the notes is made by telegraphic transfer to the nominated account of each noteholder shown on the register.

Financial Measures (Cayman) Ltd ("Measures")

92 This company was incorporated as a wholly owned subsidiary of the Government of Abu Dhabi. Pursuant to Loan Assignment agreements between (1) Measures, BCCI SA and the Government of Abu Dhabi and (2) Measures, BCCI Overseas and the Government of Abu Dhabi, a portfolio of loans was assigned to Measures.

93 We believe, on the basis of the Section 41 Report and the Minutes of meetings held between Mr. Naqvi and the Investigating Committee in early 1991, that these loans were fraudulent or illegal in that they were used for the following purposes:-

1. For nominee shareholding other than CCAH (e.g. loans to Pharaon and Adham).
2. Routing money (e.g. KIFCO, ATTOCK, and SDCC).

3. AS a cover for commodity trading (Khalil).
 4. Fictitious loans (e.g. Mahfouz family, Mohammed, and Ibrahim).
- 94 The structure of the two Loan Assignment agreements is almost identical to those involving Portfolio. The agreements were signed by the same representatives of the parties as above on the same date, i.e 22 May 1991. The terms of the promissory notes issued pursuant to these agreements is identical to those issued above.

Financial Controls (Cayman) Ltd ("Controls")

- 95 This company was incorporated as a wholly owned subsidiary of BCCI Group. Pursuant to two Loan Assignment agreements between (1) Controls, BCCI SA and the Government of Abu Dhabi and (2) Controls, BCCI Overseas and the Government of Abu Dhabi, a portfolio of loans was assigned to Controls. These Loan Assignments were signed on 22nd May 1991 and were in similar terms to those entered in respect of Portfolio and Measures.
- 96 The loans assigned to Controls were, we understand, to be real loans (even if in some cases tainted by fraud) where some recovery is possible. The book value of the loans assigned was about US\$1,016m. It seems that it was estimated that some US \$266 million would be recovered out of this total.
- 97 Under the terms of the Loan Assignment agreements, Controls and BCCI entered Credit Agreements by which Controls borrowed the purchase price of the loans from BCCI and agreed to make repayments in two tranches (A and B) payable in seven annual instalments, starting on the 28th December 1991, and one final smaller instalment due in June 1998. The total payable under the two B tranches was US \$266m. (i.e the estimated recoverable amount under the loans). The total payable under the two A tranches was US \$750m, the amount of the loans effectively written off. The payment of the sums due under the A tranches was then guaranteed by the Government

of Abu Dhabi under two guarantees to BCCI SA and BCCI Overseas. The Government of Abu Dhabi entered these guarantees as primary obligor, i.e. its liability was not dependent on default by Controls under the Credit Agreements. In the event of a breach of clause 10.4 of the Loan Assignments and subsequent re-assignment, the amounts due under the Credit Agreements and guarantees were to be reduced accordingly.

- 98 We have seen a copy of a letter dated 7th June 1991 from BCCI Overseas to the Government of Abu Dhabi, Portfolio, Measures and Controls countersigned by each of the foregoing parties, which reads as follows:

"We refer to the Loan Assignment Agreements made between us dated today.

This letter is to confirm that the representation and warranty given in Clause 10.4 of each of these agreements was given by us on the basis that none of the circumstances or facts already known to your representatives, including those disclosed to you either at the first meeting of the Investigating Committee which met on 26th February, 1991 or by the Confidential Report concerning the BCCI Group prepared by Price Waterhouse and addressed to His Excellency Ghanim Faris Al-Mazrui dated 25th February, 1991 constitute circumstances or facts of the nature described in Clause 10.4.

Accordingly, the representation and warranty given in Clause 10.4 does not extend to the matters of which you already have knowledge through your representative."

Summary of Notes/Guarantees

- 99 The total sums which the Government of Abu Dhabi undertook to pay over seven years until June 1998 can be summarised as below:

	US \$	UAE DH
<u>Portfolio</u>		
BCCI SA	353,013,000	628,910,784
BCCI	623,605,000	1,110,978,288
Overseas		
<u>Measures</u>		
BCCI SA	384,348,000	684,736,200
BCCI	700,165,000	1,247,374,728
Overseas		
<u>Controls</u>		
BCCI SA	59,468,000	-
BCCI	<u>690,532,000</u>	<u>-</u>
Overseas		
TOTAL	<u>2,811,131,000</u>	<u>3,672,000,000</u>

"Trading" of promissory notes

- 100 At some time between the issue of the promissory notes on 22nd May 1991 and an action brought by the Government of Abu Dhabi on 16th July 1991 before the Abu Dhabi Court of First Instance to seize the Notes, it appears that BCCI had "traded" some of the notes. It appears that the notes were traded at a discount with the ADIA and Bank of Credit and Commerce (Emirates) ("BCC Emirates"). The only evidence that we have of this trade is a handwritten document which sets out which promissory notes were

pledged and to whom. From such document, it appears notes to the value of US \$400 million and UAE Dirhams 1,987,263,800 were traded with ADIA, and notes of value US \$150 million and UAE Dirhams 370 million were traded with BCCE. The total of the notes traded is therefore some US \$1.193bn. This leaves outstanding notes worth US \$1.868bn. However, we have no details in regard to the terms of the trading, the price for the notes, whether the price was paid or a loan advanced, or whether the notes were validly registered and re-issued pursuant to their terms (which is to be done by ADIA itself). It is clear we suggest, that the Government of Abu Dhabi knew exactly how many notes had been traded when it applied to Court on the 16th July 1991 to seize the outstanding promissory notes. Such information could have been available to the Government of Abu Dhabi in a number of ways: by registration of the transfers made with ADIA, by the Government of Abu Dhabi being involved as a party to the trading, through Mr. Al Mazrui or another source at BCCI, or even by simple notice being given by BCCI to the Government of Abu Dhabi. We are unable to say.

Seizure of the Promissory Notes

- 101 On Tuesday, 16th July 1991 the Government of Abu Dhabi filed Complaint No. 1560 with the Abu Dhabi Civil Court of First Instance. The action aimed to "impose preventive reservation" on the promissory notes which were outstanding, and on assets to the value of US \$1.193 billion (i.e the value of the traded notes). The Court ordered such seizure and consequently that afternoon four court officers attended the head office of BCCI Group, Hamdan Road, BHS building, 6th Floor where they located the outstanding promissory notes, and the two guarantees, sealed them in yellow envelopes and deposited them in a safe (which was marked red) at the Bank. The keys to the safe are apparently being kept in the Treasury of the Abu Dhabi Civil Court. Whereas we have not seen a copy of the complaint filed by the Government of Abu Dhabi, it seems that they also requested the Court to order:-

- (a) the release of the Government of Abu Dhabi from the banking obligations set out in such of the promissory notes that had not been disposed of by BCCI and delivery of such notes to the Government of Abu Dhabi;
- (b) BCCI to pay the Government of Abu Dhabi the value of those promissory notes which had already been traded at a discount; and
- (c) costs and expenses against BCCI.

BCCI appointed representatives have sought copies of the document setting out the Government of Abu Dhabi's complaint, together with other court documents, but have not been given it, instead being referred from Judge to Court Office to Custodian to Judge and so on.

2. English principles of conflicts of laws

- 102 The Loan Assignments and the Credit Agreements are specifically agreed to be subject to English law. However, the agreements under which BCCI might wish to sue the Government of Abu Dhabi, namely the promissory notes and guarantees, are stated to subject to Abu Dhabi/UAE law.
- 103 By section 72 of the Bills of Exchange Act 1882 the validity of a bill as regards requisites and form is determined by the law of the place of issuance. Accordingly if, as we suspect may be the case, the promissory notes were signed in England (although the notes themselves state that they were "issued in Abu Dhabi") then English law would determine the formal validity of the notes. In all other respects the choice of law clause in the notes themselves will prevail with the result that the notes will be governed by the laws of Abu Dhabi. Insofar as any of the notes have been negotiated, it would seem that the negotiation again took place in Abu Dhabi.

3. Liability under English substantive law

104 We see no ground upon which the promissory notes could be challenged as a matter of English law as to form. For the reasons we have given in the preceding paragraph, English law will have no application to any other aspects of the notes and since it is our understanding that Abu Dhabi law is radically different from English law with regard to bills of exchange we see no purpose in examining the position under English law any further.

4. Liability under foreign law

105 In the limited time available to us we have been unable to obtain proper advice on Abu Dhabi law. It is, however, our understanding that Abu Dhabi law does not treat bills of exchange as giving rise to obligations independent of, and separate from, the underlying financial arrangements of which they are part. Accordingly we understand that as a matter of Abu Dhabi law the Government of Abu Dhabi would be able to raise by way of defence to any claim on the notes any matters which would give rise to a defence to an ordinary contractual claim. We emphasise that we have not ourselves been able to corroborate this understanding of the position in Abu Dhabi. On the assumption, however, that our understanding does accurately reflect the general position in Abu Dhabi law, it would seem that the promissory notes and guarantees can in practice be considered together.

106 In paragraph 73 above, we outlined three potential defences to a claim on the Subscription Agreement as a matter of English/Cayman Islands law. We do not know whether such defences would be available to the Government of Abu Dhabi in the context of a claim under the promissory notes and the guarantees but it must be at least a possibility that they would be so available. In addition, we are concerned by the seizure of the notes themselves to which we have referred in paragraph 101 above and by our ignorance of what the Abu Dhabi Court may have ruled when ordering the seizure. We have in mind a possibility of some form of defence similar to that of *res judicata* in English law.

107 In the context of the potential defences outlined in paragraph 73 above, we should draw attention to one additional factor which might be relevant in the context of the knowledge of the Government of Abu Dhabi. Originally, assignments were to be made to only two companies, two lists of loans being drawn up. The first list appears to have corresponded with those loans assigned to Portfolio and Measures (the CCAH loans were separated because of U.S. regulatory insistence) and the second to those assigned to Controls. The former consist of the sham, fraudulent and illegal loans whereas the latter were genuine loans, even if some illegal activity had been involved in the management of the accounts. To make this distinction, originally made at least as early as December 1990, someone must have known of the distinction. Since the initiative for the re-organisation came from the Government of Abu Dhabi, this knowledge is, it would seem, likely to have been shared by the Government of Abu Dhabi. The Naqvi interviews suggest this. In fact Mr Naqvi at one point offers to advise on which loans should go into which category.

5. Jurisdiction and *forum conveniens*

108 So far as the promissory notes are concerned, the only basis which we can see upon which the court might be entitled to grant leave to serve proceedings on the Government of Abu Dhabi out of jurisdiction under RSC Order 11 is that the notes were (if our suspicions are correct) signed in England. In that event Order 11, rule 1 might apply. Turning to the guarantees, on the information presently available to us we have difficulty presently in seeing how the court could grant leave to serve proceedings on the Government of Abu Dhabi out of the jurisdiction.

109 If the English court did have jurisdiction to grant leave to serve proceedings on Government of Abu Dhabi under RSC Order 11, we consider that the court would exercise its discretion in favour of granting such leave. Despite the fact that the notes and the guarantees are governed by Abu Dhabi law

we take the view that the English court would in the context of these claims consider that the *forum conveniens* was England.

6. **Enforcement**

110 We refer to our comments in paragraph 188 *et seq* below.

7. **Conclusion**

111 Given that we have been unable ourselves to obtain any proper advice on Abu Dhabi law, we do not feel that we can express any view on the likelihood or otherwise of claims succeeding under this head.

D THE MAJORITY SHAREHOLDERS' CLAIM

1. Factual Background

- 112 This alleged potential claim of the Abu Dhabi Government against the ICIC Group and/or the BCCI Group was presented to the court in Appendix 3 section D of the Joint Liquidators report of 16th March 1992 in the following terms:

"The Majority Shareholders claim to have tracing or other proprietary and trust claims against ICIC Overseas Ltd, ICIC Investments Ltd and other companies in the ICIC Group, as well as the BCCI companies arising from the misappropriation and misapplication of sums deposited with ICIC Overseas by the Majority Shareholders which is understood to have amounted in total to some \$2.2 billion".

- 113 We understand from Lovell White Durrant that no formal claim or demand has ever been made for the payment of this sum. The claim apparently had been discussed during settlement negotiations and the nature of the claim was only reduced to writing when the proposals were prepared. We understand from Touche Ross that the sums which are alleged to have been misappropriated and misapplied had been deposited at ICIC Overseas' account no.20071 ("account 20071" and also known as "the Portfolio account"). It is further alleged that the sums were the personal funds of Shaikh Zayed and his family.

Sources

- 114 We have been able to identify only a few relevant documents relating to this claim in the documents provided to us. The principal documents are:
- (i) A note entitled "Portfolio Account". This note is undated and its authorship not disclosed, however it is clearly of central relevance

providing detailed information relating to the operation of the managed Portfolio account "account 20071";

- (ii) A note prepared by Price Waterhouse of a meeting with Mr Naqvi, a BCCI Group employee and responsible for the management of account 20071, on 6th February 1991;
- (iii) A valuation report of account 20071 dated 31 March 1989 prepared by J.B Benbow & Co, Chartered Accountants entitled "Portfolio Management". The report of approximately 150 pages values the Portfolio account 20071 at just under US \$4bn.

We have seen only one contemporaneous document (or primary source document)((iii) above), otherwise knowledge derived by us has been from secondary source documentation and one meeting with Mr H. Dyson ("Mr Dyson") of Touche Ross, who was principally responsible for the investigation of the ICIC Group from July 1991.

115 We have also considered the following reports provided to us which we consider relevant:

- (iv) Price Waterhouse's draft report dated 11th December 1989;
- (v) Price Waterhouse's report of 17th June 1991;
- (vi) Price Waterhouse's reports to the Grand Court of the Cayman Islands dated:
 - a) 30th August 1991;
 - b) 13th December 1991;
 - c) 13th January 1992;
- (vii) ICIC report dated 30th June 1991. We believe this report is a preliminary draft of the draft report prepared by or for the Investigating Committee referred to at (ix) below;

(viii) Synopsis of External Funds report - prepared by BOB Churchhouse's team (employees of ADIA) undated and not issued; and

(ix) A report prepared by and/or for the Investigating Committee believed to be a draft of the Report of 17th July 1991. The copy provided to us was undated although the report was produced pursuant to a request of the Investigating Committee dated 2nd May 1991.

116 The most up-to-date report provided to us is the report prepared by and/or for the Investigating Committee at (ix) above in June/July 1991. It is qualified, inter alia, in the following terms:

"This report represents our current understanding of ICIC and its relationship with BCCI based on our restricted scope review. It should however be noted that without full access to all the reports of ICIC and unrestricted explanations from management, a full understanding will never be achieved. It is clear that a full legal review of the ICIC issues and documents is required to establish the legal status of the nominee and other arrangements and transactions noted. ... No precipitate action should be taken on the basis of this report until the legal status of the issues raised is determined." [our emphasis]

We should stress that none of the reports specifically consider this alleged claim by the Majority Shareholders.

117 We have not had the opportunity to consider any supporting documentation which, we understand, also has been denied to the Liquidators (save for a cursory inspection by Mr. Dyson). We shall, nevertheless, precis here those facts (unverified by us) as expressed in the documents we have seen which we consider are, or may be, material to this claim, supplemented by background information provided by Mr. Dyson.

Background

- 118 The ICIC Group began with the incorporation of International Credit and Investment Company Limited in Leichenstein in 1974. We understand that Mr. Abedi sought to establish an organisation that closely paralleled the BCCI Group by providing rewards to BCCI Group employees and benefitting the underprivileged of the world through charitable acts. While in form the ICIC Group and the BCCI Group were distinct legal entities, it now appears that the finances and management of the BCCI Group and the ICIC Group have been inextricably linked and that the ICIC Group operated under the direction of BCCI Group Management. The separate legal entities were allegedly exploited by the creation of artificial arrangements.
- 119 The principal development of the ICIC Group took place from 1976 when ICIC Holdings Limited and ICIC Overseas were incorporated in Great Cayman on 6th April 1976. ICIC Overseas is a subsidiary of ICIC Holdings Limited, as is ICIC Investments.
- 120 Under Cayman Islands law neither ICIC Investments nor ICIC Holdings were under an obligation to be audited. Only ICIC Overseas was subject to audit as it was a bank. ICIC Overseas operated under an unrestricted off-shore banking licence ("class B") which meant that it was prohibited from marketing itself as a deposit taking institution. We understand that its principal activity was to facilitate the purchase and sale of BCCI Group shares and to provide private banking services to high net worth individuals with whom Mr. Abedi or the BCCI Group had close connections. The ICIC Group had no marketing resources of its own and was unable to procure its own deposits. It had negligible commercial lendings. We understand that BCCI Group officers and management solicited deposits for the ICIC Group and that the BCCI Group and the ICIC Group shared a number of major customers.

Circumstances giving rise to the potential claim

- 121 We understand from the Investigating Committee's report that from the 1970's Mr. Abedi was entrusted with substantial funds to manage for investors. In November 1980 the so-called Portfolio account 20071 was established and its first bank account opened with ICIC Overseas. It is alleged that Mr. Abedi managed this account for the owners, Shaikh Zayed and Shaikh Khalifa. Soon after the account was established, Mr. Naqvi and Mr. Kazmi also became involved with the management of the Portfolio account. We understand that Messrs Abedi and Naqvi were granted powers of attorney by Shaikh Khalifa to operate the Portfolio account on a full discretionary basis.
- 122 We have seen an undated authority apparently signed by Shaikh Khalifa addressed to ICIC Overseas in the following terms:

"Reference our account No. 20071, we authorise Mr. Agha Hasan Abedi to transfer and place funds in or from the account and open and maintain accounts with your or any other bank in any country and in any currency as well as make investments in Bonds and Securities etc under his authority in writing.

This authority shall stay in force till revoked in writing."

- 123 The Portfolio account was allegedly located (and managed) from the Cayman Islands for tax reasons and secrecy. The Portfolio account was operated in complete confidentiality and no one at the BCCI Group or the ICIC Group was aware of the transactions other than Messrs Abedi and Naqvi (the Fund Managers) and Mr. Kazmi, Fund Operation Manager, assisted by Mr. M. Y. Kassim - Manager, ICIC Investments. We understand that neither Mr. Abedi nor Mr. Naqvi were office holders or employees of ICIC.

127 It appears that the funds were originally remitted by the owners from the National Bank of Abu Dhabi to Banque de Commerce et de Placements SA ("BCP") in Geneva for the credit of ICIC Overseas' Account with BCP. On receipt of advice from BCP that a remittance from Abu Dhabi had been received and credited to ICIC Overseas' Account with them, ICIC Overseas credited the amount received in their own books to a numbered deposit account No. 20071. Subsequently, Banking Accounts with a number 20071 were opened through ICIC Overseas with BCCI Overseas Ltd, Cayman Islands, BCCI SA and BCP in Luxembourg. An account was also opened with the Union Bank of Switzerland ("UBS") in Zurich. The purpose of these accounts was to handle Portfolio account transactions only.

125 It appears that the entire account was operated under the strict authority and supervision of Mr. Abedi and Mr. Naqvi who gave instructions to Mr. Kazmi, either in writing, by telephone or in person. Transfer of funds from one account to another or to a broker for the purpose of investments were made by Mr. Kazmi and Mr. Kassim. (The account with UBS was operated by Mr. Abedi or Mr. Naqvi only.) The investments included:

- (i) Placements with UBS and investments in Euro Bonds;
- (ii) Investments in US Treasuries. These were made through ICIC Investments by Mr. Kassim in consultation with Mr. Kazmi. First class US security houses were used for this purpose and an account was opened by ICIC Investments for this purpose;
- (iii) Certificates of deposits. These were purchased and managed through BCCI Overseas Ltd, Cayman Islands and BCP who also acted as custodian banks;
- (iv) Shares and Capital Notes of BCCI SA. The decision to invest in these securities was taken by Mr. Abedi or Mr. Naqvi with the consent of the owners; and

and the BCCI Group (the identity of which BCCI entity is unclear) took place in 1983/84 and the funds were pooled with a general pool of funds. In ICIC's books (the identity of which ICIC entity is unclear) these were shown as amounts placed with the BCCI Group for periods of one to two months. Initially, the BCCI Group used to try to repay them by creating further loans in the BCCI Group. Mr. Naqvi informed Price Waterhouse that *"after two to three years this attrition became unmanageable and the hole in ICIC became apparent. The records were kept by ICIC Investments on behalf of the DPA... [the Department of Private Affairs of Shaikh Zayed, ("the DPA")]* which were outside the books of accounts of the company itself". Mr. Naqvi is reported as saying that *"cash utilised had in some instances been replaced by shares and other investments"*.

- 129 Apparently ICIC Investments also undertook "repo" deals (as described below) with Portfolio account investments in order to assist the liquidity of the BCCI Group. Mr. Dyson told us that Touche Ross, whilst investigating the ICIC Group had uncovered a number of statements from brokers in the US relating to repo deals undertaken by ICIC Investments. The papers suggested a flow of funds up to US\$800 million. Mr. Dyson described a typical repo deal as follows. A treasury bill from the Portfolio valued at, for example, US\$100 million would be deposited as security with brokers. The brokers would then advance 85% of its value. The amount released (i.e. \$85 million, less the broker's fee and interest) would then be remitted for the benefit of the BCCI Group (and not the Majority Shareholders). Typically a repo deal would be for one month. At the end of the month the broker would either be paid out thereby releasing the security or, more typically, the deal would be rolled-over on a month to month basis. At the end of each month the value of the treasury bill would be reassessed. If it had increased in value then further sums (up to 85% of its value) could be released. If the treasury bill had decreased in value then the broker required sufficient payment so that the amount advanced was not more than 85% of the value of the security. If payment was not received the treasury bill would be sold in the market and its proceeds used to pay the debt due to the broker and

any balance held in a trust account. The majority shareholders would then have lost their claim on the treasury bill, of which they were the owners, and the BCCI Group would have had the benefit of the funds (from when the repo deal was established).

- 130 As at 31st March 1989, J. B. Benbow & Co, Chartered Accountants, Cayman Islands valued the Portfolio account at US \$3,985,509,556. The last year quarterly statements were prepared was in 1989. At the end of 1989 the DPA apparently undertook a full review of the Portfolio account and prepared a detailed report. Apparently, the Portfolio account comprised shares in the BCCI SA and CCAH in excess of US\$4 billion and certificates of deposit valued at US\$2.3 bn. We understand that in March 1990 Account 20071 was closed, having only a nominal balance.
- 131 The note of the meeting with Mr. Naqvi provides the only documentary evidence we have seen that misappropriation and misapplication resulted in a shortfall in the Portfolio account of \$2 billion. Under pressure, Mr. Naqvi apparently *"acknowledged"* that *"some \$2 billion had been absorbed in cash from the portfolio including interest accruals"*. Mr. Naqvi was apparently pressed several times by Price Waterhouse regarding the net deficit of the Portfolio account, after taking the US \$2 billion and deducting from it any other share investments returned to the DPA. Mr. Naqvi said he was unable to do this, but noted that *"much work had now been done by [Mr.] Akbar in trying to reconcile the funds taken from the DPA"*. The funds removed appeared to have been paid to the Gulf group and two other accounts. Mr. Naqvi said that *"the Gulf group funds which flowed from the DPA have been substantially reconciled but those for the other accounts have not. At that time there was very little record as to the funds which have been returned to the DPA"*.
- 132 In 1990 Mr. David Youngman, a former partner of Ernst & Whinney had been brought in by the DPA (headed by Mr Al Mazrui) to investigate the Portfolio account. We understand that Mr. Youngman arranged for the

removal of all papers relating to ICIC Investments and account 20071 from the UK and the Cayman Islands to Abu Dhabi. Mr. Dyson told us that Mr. Youngman was surprised that Touche Ross had found anything at all regarding the Portfolio account or ICIC Investments as he, and his team, had sought to remove all relevant papers. Mr. Youngman had not foreseen Touche Ross locating the brokers' papers. Mr. Dyson informs us that Touche Ross have not had the opportunity to investigate the DPA's allegation that the shortfall in the Portfolio was \$2.2 billion. Mr. Dyson had been allowed to inspect the papers relating to account 20071 but he was prohibited from copying them or taking any notes of their contents. Mr. Dyson informed us that by using these papers Mr. Youngman was attempting to reconstruct the flow of transactions through account 20071 in order to create a ledger of all the dealings in securities and repo deals. Mr. Youngman has apparently traced \$90,000,000 of funds into the accounts of brokers engaged in repo deals who had sold their security, paid out the debt and retained any residue in their trust accounts.

2. English principles of conflicts of laws

- 133 The claim by the Majority Shareholders is for tracing or other proprietary and trust claims against ICIC Overseas, ICIC Investments, and other companies in the ICIC Group as well as the BCCI Group arising from the misappropriation and misapplication of sums deposited with ICIC Overseas by the Majority Shareholders which is understood to have amounted to some \$2.2 billion. Under English conflicts of laws principles we consider that this claim is likely to be decided in accordance either with the law of the Cayman Islands (as being the place of incorporation of ICIC Investments, ICIC Holdings and ICIC Overseas and of BCCI Overseas Ltd) or the law of England (as the place where the assets, if any, are now to be found). We understand that the substantive law of the Cayman Islands is likely to be much the same as English law so far as this claim is concerned.
- 134 Although, to our knowledge, there are no decided cases on the point, our preliminary view is that this claim (being based as it is on a breach of

negligent duty, gives rise to a claim analogous to a non-contractual, i.e. tortious claim, and would be justiciable as such. Accordingly, if the wrongful acts which give rise to the claim took place out of the jurisdiction of the English Courts then the action would only be justiciable in the UK if the claim was actionable both as a matter of English law and in the jurisdiction in which the wrongful act occurred.

3. Liability under English substantive law

135 Under English law, for the Majority Shareholders to establish their claim in equity for tracing or other proprietary relief in equity they would have to establish:

- (i) that they entrusted at least US \$2.2 billion to ICIC Overseas for some specific purpose, such as for investment, and not by way simply of deposit;
- (ii) that at least US \$2.2 billion of such funds were either misapplied, i.e. used other than for the specified purpose, or misappropriated;
- (iii) that those responsible for such misapplication or misappropriation were directors or officers of the ICIC Group and/or the BCCI Group;
- (iv) that such directors or officers knew that they were misapplying or misappropriating the funds; and
- (v) that the assets available to the Liquidators of the BCCI Group represent the proceeds of such misapplication or misappropriation.

Such a claim, if wholly successful, could result in the entirety of the assets available to the Liquidators being "earmarked" for the Majority Shareholders. If any such assets could be traced directly to the misapplied funds, such assets would belong in equity to the Majority Shareholders;

making such direct identification, the Majority Shareholders would be entitled to an equitable charge over the assets in the amount of the misapplied funds.

136 In order to get such a claim off the ground the Majority Shareholders would have to produce all relevant documentation, in particular all documents relating to the circumstances in which, and the terms upon which, the funds were originally entrusted to ICIC Overseas. The attitude of the Majority Shareholders to date, as exemplified in their conduct to which we refer in paragraph 132 above, suggests a marked reluctance to make such documents available to anyone, let alone to produce them in circumstances where they might be read in open court.

137 Since the Majority Shareholders are seeking equitable relief, they would themselves have to come to court with "clean hands". This may create some difficulties for the Majority Shareholders, not least because the conduct to which we refer in paragraph 132 above, would appear to constitute a criminal offence under section 169 of The Companies Law (Cayman Islands). The BCCI Group and/or the ICIC Group might also be able to mount defences if it could be established that the Majority Shareholders were implicated in fraud or that the entrusted funds were derived from some tainted source.

4. Liability under foreign law

138 In the limited time available to us we have obtained only limited advice as to Cayman Islands law. This advice would suggest that the Cayman Islands law relevant to this claim is similar to English law.

5. Jurisdiction and *forum conveniens*

139 The jurisdiction with the closest proximity to the alleged claim is the Cayman Islands. ICIC Overseas and ICIC Investments were incorporated there, the funds were operated there and the misappropriations and misapplications appear to have taken place there.

140 Nevertheless, the English Courts will accept jurisdiction over a claim where the defendant is situate within the jurisdiction. Jurisdiction and *forum conveniens* in England is unlikely to present an obstacle as BCCI S.A. had a representative office in the UK and ICIC Overseas and ICIC Investments would be necessary and proper parties to the dispute and leave to issue a writ against them out of the jurisdiction would be likely to be granted pursuant to Order 11 rule 1(1)(c).

6. **Enforcement**

141 On the basis that the Majority Shareholders would, if successful in this claim, be seeking to enforce an English judgment in respect of assets in the hands of the Liquidators, no problems of enforcement would arise.

7. **Conclusion**

142 The failure of the Majority Shareholders to pursue this claim with any vigour, the imprecise way in which it has been formulated and the obvious sensitivity attaching to the underlying documentation leads us to conclude that this claim should be viewed with some suspicion and that it would not be right for the Creditors' Committee to assume that it would succeed.

.. ANNEXURE A

1. Factual background

143 Price Waterhouse, in a number of documents referred to below, have stated that an indemnity was given by the Government of Abu Dhabi in connection with the 1989 Consolidated Accounts of BCCI Holdings. We do not have any other independent evidence to substantiate Price Waterhouse's contention that, in about April 1990, an indemnity was given. Price Waterhouse say that the indemnity was given by the Government of Abu Dhabi to the directors of BCCI Holdings for all the losses, false, doubtful and bad loans identified in Price Waterhouse's Report, dated 18th April 1990. The indemnity apparently enabled Price Waterhouse to avoid qualifying the 1989 Consolidated Accounts of BCCI Holdings regarding these loans and losses. If it could be proved that an indemnity was given, its terms and its extent, then it may be possible to bring a claim, (we assume in the name of BCCI Holdings), against the Government of Abu Dhabi. It is possible, although speculation on our part, that in fact the indemnity itself is no more than what ultimately became the Financial Support Arrangements. If this is the case then most of the considerations below are rendered irrelevant.

144 The evidence we currently have, which emanates from Price Waterhouse, that an indemnity may have been given by the Government of Abu Dhabi is as follows:

- (i) In a memorandum, dated 5th February 1992, submitted by Price Waterhouse to the Treasury and Civil Service Committee House of Commons Session 1991-92: and quoted in "Banking Supervision and BCCI: International and National Regulation" published by HMSO on 4th March 1992 (Fourth Report) ("the Treasury Committee") they state:

The Government of Abu Dhabi has given a commitment to indemnify BCCI against loss either by taking over balances at no loss to BCCI or by contributing equivalent funds to make good any losses incurred on the loans and advances in question."

- (ii) Price Waterhouse on page 1 of their report dated 18th April 1990 stated:

"It will not be possible for us to issue an unqualified audit report unless the major shareholders agree to provide financial support ... Appropriate disclosure of such an arrangement would be required in the 1989 financial statements".

- (iii) The Notes to the Consolidated Accounts, signed by Price Waterhouse in April 1990 in respect of the Consolidated Accounts, dated 31st December 1989, of BCCI Holdings state that:

"They have advised the directors of their intention to maintain the group's capital base whilst the reorganisation and restructuring necessary for its continued development is undertaken".

Although it is not clear who "they" are, it may be a reference to the Government of Abu Dhabi.

- (iv) In their report, (page 3) dated 18th April 1990, Price Waterhouse refer, *inter alia*, to:

"certain accounting transactions principally booked in Cayman and other offshore centres have been either false or deceitful. Whilst we and the task force have sought to identify all problem transactions, it is impossible, without an exhaustive enquiry, to know whether this has been achieved."

in their memorandum, dated 2nd January 1992, submitted to the Treasury Committee in reply to its questions, Price Waterhouse stated:

"To remove this uncertainty and enable BCCI to finalise its accounts in accordance with the Institut Monetaire Luxembourgeois deadline of 30 April 1990, the Government of Abu Dhabi, as the effective controlling shareholder, pledged that it would cover all the losses arising from these problem transactions which, until fully investigated, were not capable of qualification."

- (v) In his evidence to the Treasury Committee, Mr Brian Quinn, the Executive Director of the Bank of England, referred to an "indemnity" and said in reply to question 241:

"The guarantee at that stage was effectively unlimited. That is what it amounted to. The shareholder said, 'We will make good the hole in the balance sheet'. He said that in April 1990 He said the same thing in October 1990".

- (vi) The Timetable of Events for 1972-1991, relating to the BCCI Group, which the Treasury Committee compiled in consultation with the Bank of England, states that in the first week of January 1991:

"Bank of England is told of..... unrecorded deposits. Abu Dhabi agrees to make good any shortfall in respect of these deposits."

- (v) A letter dated 21st March 1991 from the Finance Department of the Government of Abu Dhabi states:

in January, our representative informed Mr. Barnes about possible liabilities to customers in respect of deposits which have not been properly recorded in the books of companies in the BCCI Group.

The circumstances surrounding these deposits are currently being investigated with a view to determining whether BCCI Holdings (Luxembourg) S.A. subsidiaries have a legal obligation to make repayment of the whole or any part of the deposits concerned. In the event that such legal obligation to repay is proven to the reasonable satisfaction of the Government of Abu Dhabi ("The Government") and that the aggregate of all repayments made pursuant to any such obligation does not exceed US\$600 million, then I confirm that the Government will consider carefully with senior management of BCCI Holdings (Luxembourg) S.A. the additional support which would be necessary for BCCI Holdings (Luxembourg) S.A. to meet its then outstanding obligations and the then current requirements of the banking regulators concerned with its consolidated supervision.

I also confirm the Government will provide, or will assist in establishing arrangements which provide, BCCI Holdings (Luxembourg) S.A. with such additional financial support in the event of the above conditions being satisfied. However, until investigations are completed, we cannot specify the precise nature which any such additional financial support might take. Agreement would at that time need to be put in place in order to convert the Government's intention into legally binding obligations."

- 145 With the exception of the letter of 21st March 1991, we do not have any independent evidence to substantiate the statements referred to above and cannot therefore confirm the accuracy of their content. Nor do we know what evidence Price Waterhouse have of the existence of the indemnity or

where there that evidence is now. If it can be proved the indemnity was given then there may potentially be a claim and we consider it briefly below.

2. English principles of conflicts of laws

146 So far as any indemnity contained in the letter of 21st March 1991 is concerned, we take the view that since this letter was written in Abu Dhabi by the Government of Abu Dhabi (Finance Department) it would, in accordance with English principles of conflicts of laws, be governed by the law of Abu Dhabi. The law of Abu Dhabi would, therefore, be the law which would decide whether the letter contained any actionable indemnity, on the basis of the limited facts available to us it is unlikely that English substantive law would have any relevance.

3. Liability under English substantive law

147 Given our conclusion in preceding paragraph, we see no purpose in discussing any possible position in English law.

Sovereign Immunity

148 This defence would not avail the Government of Abu Dhabi for the reasons stated in paragraph 170 *et seq* below.

4. Liability under foreign law

149 In the limited time available to us we have been unable to obtain any foreign law advice in this claim.

5. Jurisdiction and *forum conveniens*

6. Enforcement

7. Conclusion

151 No realistic assessment can be undertaken at this stage.

1. THE CLAIMS AGAINST THIRD PARTIES

1. Factual Background

152 The Contribution Agreement refers, *inter alia*, to Third Party Recoveries. All references to clauses and schedules in this section are taken from the Contribution Agreement. The principal relevant provisions of the Contribution Agreement are:

- (a) Third Party Recoveries are defined in part 1 of schedule 1 as all sums received by any of the Parties or the Majority Shareholders in satisfaction of any of the Rights against Specified Third Parties and any of the Third Party Claims;
- (b) Clause 3(B) provides that Third Party Recoveries by any party shall be shared equally between the Government of Abu Dhabi on the one hand and the Participating Parties on the other hand after deduction and/or reimbursement of costs;
- (c) By clause 8 (1) the Principal Liquidators, and other liquidators who subsequently agree, will assign to the Government of Abu Dhabi, or such of the Majority Shareholders as the Government of Abu Dhabi may nominate, the Rights against Specified Third Parties by entering into a Deed of Assignment;
- (d) If the assignment is not, for one of a number of reasons stated in clause 8(A)(3) effective, then the Rights against the Specified Third Parties will revert to the relevant Participating Party and Participating Liquidator who will then hold upon trust the net proceeds or benefits arising from the Rights and share them equally between the Government of Abu Dhabi and the Participating Parties;
- (e) The Contribution Agreement does not assign Third Party Claims other than claims against the Specified Third Parties.

The Third Party Claims

153 This expression means claims against Third Parties other than claims against the Specified Third Parties referred to above in sub-paragraph (f). Third Party Claims are defined in part 5 of schedule 2 as, inter alia, causes of action, claims, rights or other interests of the Parties or the Majority Shareholders which may be brought or be the subject of a claim or proceedings in any civil court of competent jurisdiction in respect of any loss, costs, obligation, expense, liability or damage arising prior to 5th July 1991 and arising out of or in connection with the affairs or business of the BCCI Group, including, but not limited to, any loss suffered by any of the Participating Parties. It refers to claims against any other person, corporation or entity who:

- (a) is, or has been, an officer or any member of the Extended BCCI Group;
- (b) is or has acted as an agent of or advisor or auditor to or had statutory or other responsibilities governing or affecting any member of the Extended BCCI Group or any Party;
- (c) is or has been concerned or taken part in the management of any member of the Extended BCCI Group;
- (d) has committed a tort or civil wrong against or otherwise caused damage to any member of the Extended BCCI Group.

154 The definition excludes:

- (a) any claim brought by any member of the BCCI Group against a third party to the extent of its indebtedness to any member of the BCCI Group which was incurred in the ordinary and proper course of business of the BCCI Group before or at 5th July 1991 and to recover

the third party assets in respect of its indebtedness and/or to recover assets of the third party which appear or are reflected in the books of account of the BCCI Group;

- (b) any claim brought by any of the Abu Dhabi Parties against any of them or to recover the "Excluded Funds".

Specified Third Parties

155 The Specified Third Parties are:

- (i) Price Waterhouse;
- (ii) Ernst & Whinney;
- (iii) Allen & Overy; and
- (iv) certain specified individuals.

The involvement of each of these organisations or persons in the affairs of the BCCI Group may be summarised as follows.

Price Waterhouse

156 We have extracted from various reports, referred to below, information to illustrate the alleged facts and circumstances which may be of relevance to an action against Price Waterhouse. We emphasise that no conclusions should be drawn from them.

- From 1975 to 1987, Price Waterhouse audited BCCI Overseas, and BCCI Emirates (registered in Abu Dhabi). In 1987 Price Waterhouse took over the global audit of the BCCI Group and became its sole auditor. Price Waterhouse accordingly had a lengthy involvement with the BCCI Group, and in particular with BCCI Overseas.
- In its report, dated 11th November 1989, to the Audit Committee, Price Waterhouse referred to a number of its concerns about the

BCCI Group, such as the recoverability of certain international loans, the adequacy of provisions held against doubtful accounts particularly in respect of old slow moving accounts booked in the Cayman Islands and other locations and that the Group had not set formal limits in interest rate risks. As a consequence of Price Waterhouse's pressure, BCCI Holdings set up a task force to review bad loans and related transactions.

- The task force in its report, dated April 1990, commented that Price Waterhouse had encountered serious difficulties in obtaining records and documents in the Cayman Islands. In addition, it apparently did not have adequate access to records in Kuwait and Switzerland. Further, in their draft Report dated 22nd June 1991, Price Waterhouse state:

"It should be emphasised that much of the information contained in this report is based on records which have previously been concealed from us, as auditors, and only came to light as a result of our insistence on the files of Mr Naqvi being sealed (sic) such records having been in his personal possession".

- In its memorandum, dated 2nd January 1992, submitted to the Treasury and Civil Service Committee, House of Commons Session 1991-1992: "Banking Supervision and BCCI: International and National Regulation", Price Waterhouse stated that in November 1990 it commenced a detailed investigation and sought access to the suite of rooms in Abu Dhabi where Mr Naqvi, despite his resignation from the BCCI Group, was working as its "adviser". On obtaining access Price Waterhouse found a large quantity of files, some of which, they state, contained significant information previously withheld from them. From these files, Price Waterhouse state, they obtained evidence of the creation of substantial fictitious loans and the BCCI Group's collusion with customers to create borrowing which the customers were relieved of any responsibility to repay. Price

watchhouse say that they had not had access to this information before.

Ernst & Whinney

- 157 We understand that prior to 1987 Ernst & Whinney were the BCCI Group auditors responsible for the Consolidated Accounts of BCCI Holdings but they did not audit BCCI Overseas and BCCI Emirates.

Allen & Overy

- 158 We understand that Allen & Overy acted as solicitors for the BCCI Group and the Government of Abu Dhabi from around the end of October 1990. Their involvement apparently related to the Financial Support Arrangements.

Certain specified individuals

- 159 Part 4 of schedule 2 names 52 individuals, some of whom were directors of the BCCI Group. We do not know what role most of the remaining individuals may have played. We do not consider these individuals any further in this Report.

2. English principles of conflicts of laws

- 160 As we explain further below, the causes of action which might lie against the Specified Third Parties would arise either in contract or in tort. Insofar as a claim was contractual, English principles of conflict of laws would rule that the law to be applied to such claims was the proper law of the contract in question. Since we are wholly unaware of the terms of any of the relevant contracts with the Specified Third Parties, we cannot say what the proper law to be applied to any particular claim would be. So far as tortious claims

were concerned, the principles which we have summarised in paragraph 19 above would apply.

3. Liability under English substantive law

Price Waterhouse

161 It is the contract between Price Waterhouse and (we assume) BCCI Holdings which will primarily determine the obligations owed by Price Waterhouse to BCCI Holdings. In addition, there could be claims in tort, for instance negligence. On the information presently available to us it is by no means clear that any of the Abu Dhabi Parties would have a claim against Price Waterhouse in their own right.

162 We are unable to comment on whether there are valid claims against Price Waterhouse. Clearly, there were numerous problems within the BCCI Group in relation to, inter alia, loans, documents and management. A particular area for inquiry will be the failure of Price Waterhouse to discover the "bank within a bank" at BCCI SA. However, the evidence we have considered in our Report in relation to the BCCI Group primarily originates from Price Waterhouse and we have seen no independent evidence. Moreover, to evaluate the potential claims against Price Waterhouse, their conduct of the audit of the BCCI Group over the period of the audit would have to be considered by expert accountants who would need carefully to investigate the information that was or should have been available to Price Waterhouse at the time of the audits. We do not know whether a report of this character has been prepared. In the absence of such a report and in the limited time we have had to prepare this Report we are unable to give an opinion regarding the value and merits of a claim against Price Waterhouse.

Ernst & Whinney

163 The comments which we have made in paragraph 100 above apply *mutatis*
 164 *mutandis* to Ernst & Whinney. Again we are not in a position to evaluate
 the merits of any possible claim against them.

Allen & Overy

164 Again we are not in a position to evaluate any claim against them.

4. Liability under foreign law

165 We have not sought foreign law advice. However it is likely that the most
 potent area for consideration of foreign law is the United States of America.

5. Jurisdiction and *forum conveniens*

166 As we do not know against whom the claims could be brought against or the
 causes of action available against the parties considered in this section then
 any discussion regarding jurisdiction and *forum conveniens* is purely
 speculative. However as the professional advisers are domiciled within the
 jurisdiction of England and Wales, then the leave of the court to bring
 proceedings is not required. We understand that writs have been issued
 against Price Waterhouse and Ernst & Whinney but apparently not against
 Allen & Overy. Equally it should be noted that these firms of accountants
 do have places of business elsewhere especially in the USA, though we do
 not know whether they are the same firm for these purposes.

6. Enforcement

167 No problems of enforcement would, in our view, arise.

7. Conclusion

168 Although we are unable to evaluate the merits of any potential claims against the Specified Third Parties, plainly such claims could be of considerable value, especially if they could be pursued in other jurisdictions, for instance in the United States.

3. MISCELLANEOUS MATTERS

169 Under this head we consider three matters which apply generally to the potential claims we have been discussing, namely

- (1) sovereign immunity from suit; and
- (2) enforcement.

1 Sovereign immunity from suit

170 Given the identities of the Majority Shareholders, the question of sovereign immunity arises in relation to each of the potential claims which we have identified under A, B, C and E above.

171 Whereas under claims B and C the potential defendant can be specified with some degree of confidence, this does not apply to claims A and E. for the sake of convenience we propose to examine the position of each of the Majority Shareholders in relation to each of the 4 claims.

(a) Shaikh Zayed

172 The State Immunity Act 1978 came into force on 22nd November of that year. By section 23(3) the Act does not apply to proceedings in respect of matters that occurred before that date. We take first the position of Shaikh Zayed under the 1978 Act.

173 Although the 1978 Act speaks of "a State", that expression includes the sovereign of the State in his public capacity (see section 14(1)(a)). Section 1(1) lays down the general rule that a State is immune from the jurisdiction of the courts of this country. That general rule is then subject to a number of exceptions, for example, where the State has submitted to the jurisdiction (section 2) or where the proceedings relate to:

- (a) a commercial transaction entered into by the State; or

- (c) an obligation of the State which by virtue of a contract (whether a commercial transaction or not) falls to be performed wholly or partly in the United Kingdom" (section 3(1)).

Claim A: Fraud and Misfeasance

174 "Commercial transaction" is defined by section 3(3) of the 1978 Act to mean

- "(a) any contract for the supply of goods or services;*
- (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and*
- (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character into which a State enters or in which it engages otherwise than in the exercise of sovereign authority".*

175 It is only section 3(3)(c) which could be relevant in the context of this claim. Although one would not usually describe fraud in the conduct of a bank's affairs, or vicarious liability for such fraud, as a transaction or activity, whether of a financial or similar character, into which a State enters or in which it engages otherwise than in the exercise of sovereign authority, we have no doubt that those words are wide enough to encompass the sort of fraud contemplated under this potential head of claim. We conclude, therefore, that Shaikh Zayed could not plead sovereign authority under the 1978 Act in relation to this claim.

Claim B: The Subscription Agreement

176 In our opinion the Subscription Agreement was probably a transaction for the provision of finance within section 3(3)(b). Clearly, it was also a

transaction within sub-section (2)(c) and again no question of sovereign authority could arise. Accordingly, we conclude that Shaikh Zayed could not plead sovereign authority under the 1978 Act in respect of a claim under this head against him (if any).

Claim C: The Financial Support Arrangements

177 The Promissory Notes provide (at clause 8), inter alia, as follows:

"The Issuer hereby irrevocably waives with respect to the Notes any right to claim sovereign immunity from jurisdiction or execution and any similar defence, and has irrevocably consented to the giving of any relief or the issue of any process, including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment made or given in connection with any suit, action or proceedings."

Similarly clause 10 of the Guarantees provides as follows:

"The Guarantor hereby irrevocably waives with respect to this Guarantee any right to claim sovereign immunity from jurisdiction or execution and any similar defence, and has irrevocably consented to the giving of any relief or the issue of any process, including without limitation, the making, enforcement or execution against any property whatsoever (irrespective of its use or intended use) of any order or judgment made or given in connection with any suit, action or proceedings"

In our opinion these provisions constitute an effective submission to the jurisdiction within section 2 of the 1978 Act such as to prevent Shaikh Zayed (were he to be liable for this claim) from relying upon sovereign immunity.

178 Irrespective of a possible waiver or submission, we have no doubt that section 3 of the 1978 Act would prevent Shaikh Zayed from claiming

sovereign immunity. If the obligation to honour the Promissory Notes or the Guarantees fell to be performed wholly or partly in the United Kingdom, section 3(1)(b) would apply. Turning to the exception of "commercial transaction" clearly an obligation to honour the Promissory Notes or the Guarantees would not fall within (a). As to (b), although in a sense the issuing of Promissory Notes and Guarantees could be said to be a "transaction for the provision of finance", it is by no means obvious that (b) would apply. On the other hand, the issuing of Promissory Notes and Guarantees would clearly come within (c); no question of the exercise of sovereign authority could, in our view, arise. It follows that Shaikh Zayed could not plead sovereign immunity under the 1978 Act in any English proceedings brought to enforce this claim.

Claim E: The Indemnity Claim

- 179 Again we have no doubt that any claim on any indemnity would be covered by section 3(1)(c) of the 1978 Act and no plea of sovereign immunity could therefore arise.
- 180 In the preceding paragraphs, we have outlined the position under the 1978 Act. The facts underlying claims B, C and E must have occurred since November 1978. In theory at least, however, claim A could arise out of events which happened prior to 22nd November 1978. In that case, the 1978 Act would be of no relevance and one would have to have recourse to the position at common law prior to the passing of the 1978 Act. In Trendtex Trading Corporation v Central Bank of Nigeria [1977] Q.B. 529 Lord Denning M.R. and Shaw L.J. held that the restrictive theory of sovereign immunity represented the correct view of the common law and that sovereign immunity did not extend to commercial acts. The House of Lords in The I Congreso del Partido [1983] A.C. 244 subsequently confirmed that the majority view had been correct. It follows that the position at common law would, in effect, be the same for present purposes as that under section 3(3) of the 1978 Act with the result that our conclusions in the preceding paragraphs would be the same even if the 1978 Act did not apply.

(b) Shaikh Khalifa

- 181 Neither at common law nor under the 1978 Act would he be entitled to sovereign immunity from suit.

(c) The Government of Abu Dhabi

- 182 The Government of Abu Dhabi would be in precisely the same position as Shaikh Zayed both under the common law and, by virtue of section 14(1)(b), under the 1978 Act.

(d) The ADIA

- 183 We take first the position of the ADIA under the 1978 Act. We understand that as a matter of Abu Dhabi law the ADIA is a corporate body capable of suing and being sued in its own name. It would seem therefore that the ADIA would be regarded by English law as a "separate entity" within the meaning of section 14(1) of the 1978 Act, namely an entity

"which is distinct from the executive organs of the government of the State and capable of suing or being sued".

- 184 As a separate entity, the position of the ADIA would be governed by section 14(2) of the 1978 Act, which reads:

"A separate entity is immune from the jurisdiction of the Court of the United Kingdom if, and only if

- (a) the proceedings relate to anything done by it in the exercise of sovereign authority; and
- (b) the circumstances are such that a State would have been so immune".

185 It follows from our discussion of Shaikh Zayed's position under the 1978 Act that the ADIA would be unable to establish either limb of section 14(2) and that the ADIA would likewise be unable to claim sovereign immunity.

186 We now turn to the position at common law. In the Trendtex case the Court of Appeal held unanimously that the Central Bank of Nigeria was not an "alter ego or organ" of the Nigerian Government and declined the plea of sovereign immunity on that ground. It seems to us that by a parity of reasoning the ADIA would be regarded by the common law as "a separate legal entity" and as not entitled, therefore, to sovereign immunity.

187 In summary, our conclusion on this first issue of sovereign immunity as a matter of English law is that neither Shaikh Zayed, nor Shaikh Khalifa, nor the Government of Abu Dhabi, nor the ADIA would be able to claim sovereign immunity, either at common law or under the 1978 Act, in proceedings brought in this country in respect of any of the potential claims identified above.

2. Enforcement

188 We now assume the factual hypothesis that the Liquidators have succeeded in obtaining a judgment against one or more of the Majority Shareholders. This question would then arise: could that judgment be enforced against assets of the Majority Shareholders in England? We consider this matter of enforcement with regard to each of the Majority Shareholders in turn.

(a) Shaikh Zayed

189 It is section 13 of the 1978 Act which deals with enforcement. The relevant provisions are as follows:

"(2) Subject to subsections (3) and (4) below -

(a) *relief shall not be given against a State by way of injunction or order for specific performance or for the recovery of land or other property;*

and

(b) *the property of a State shall not be subject to any process for the enforcement of a judgment or arbitration award*

(3) *Subsection (2) above does not prevent the giving of any relief or the issue of any process with the written consent of the State concerned; and any such consent (which may be contained in a prior agreement) may be expressed so as to apply to a limited extent or generally; but a provision merely submitting to the jurisdiction of the courts is not to be regarded as a consent for the purposes of this subsection.*

(4) *Subsection (2)(b) above does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes"*

190 Two points should be noted in relation to section 13. First, by virtue of section 17(1), the expression "commercial purposes" in subsection (4) means "purposes of such transactions or activities as are mentioned in section 3(3) of the Act (see paragraph 174 above). Second, in Alcom Ltd v Republic of Colombia [1984] A.C. 580 the House of Lords held that the credit balance standing in a current account kept with a commercial banker for the purpose of meeting the expenditure incurred in the day-to-day running of a foreign embassy was not within the exception created by section 13(4) and accordingly was immune from garnishee proceedings.

191 In the absence of any information whatsoever as to Shaikh Zayed's assets in the United Kingdom we cannot advise further at this stage on the position with regard to enforcement against him.

(b) Shaikh Khalifa

192 Just as he is not immune from suit, likewise he is not immune from enforcement.

(c) The Government of Abu Dhabi

193 Again, our comments in paragraphs 189 to 191 above with regard to Shaikh Zayed apply *mutatis mutandis* to the Government of Abu Dhabi.

(d) The ADIA

194 Any judgment against the ADIA could be enforced against any assets of that organisation with the United Kingdom. In expressing that view, we have not overlooked the special treatment accorded by the 1978 Act to a State's "central bank or other monetary authority". The effect of section 14(4) of the Act is that the property of a central bank or other monetary authority is normally immune from suit because it is not regarded as in use or intended for use for commercial purposes; and where the central bank or other monetary authority is a separate entity it is nevertheless entitled to immunity from injunctive relief and execution as if it were a State. Clearly, however, the ADIA is not the central bank of Abu Dhabi. Nor, in our view, it is to be regarded as any other form of "monetary authority"; it is, in effect, the investment arm of the Government of Abu Dhabi.

PART 3**Conclusion****Pooling Arrangements**

- 1 We understand that prior to our being instructed, the Creditors' Committee favoured the concept of pooling the assets and liabilities of BCCI SA and BCCI Overseas in order to avoid protracted litigation and disputes between the liquidators of those companies whose assets have been inter-mingled. The Proposals envisage that this pooling concept be extended to various other members of the BCCI Group. It is a condition of the Proposals imposed by the Abu Dhabi Government that as a minimum the assets and liabilities of BCCI SA and BCCI Overseas be pooled.
- 2 It is a basic principle of English law that each company in a group is a separate legal entity. Although BCCI SA is an overseas company, the liquidation by the English Courts of its English assets is governed by the rules of English law (see paragraphs 13 and 14 below). Creditors of each company are entitled to have its assets applied to discharge its liabilities. Creditors of a particular company in the group might have made credit available to that company specifically because they knew that it did have substantial assets or banking status.
- 3 However, we are aware of at least one scheme of arrangement under the Companies Act 1985 s425 by which certain insolvent companies which formed part of a reinsurance pool pooled their assets and liabilities. This was because the inter-company arrangements were complex and separate liquidations would have prevented a concerted approach to the run-off of their insurance business. The Creditors' Committee may consider that similar considerations apply in the BCCI Group but *need to consider precisely which companies should be included in the pool and which should not.*

- 4 In our view, poolings would be appropriate if:
- the assets and liabilities of the companies concerned were intermingled; and/or
 - such companies have been run as one entity; and/or
 - the costs of untangling the inter-company arrangements would outweigh any benefits.
- 5 The liquidators and their legal advisers clearly believe that there are good reasons in this case why the assets and liabilities of the companies included in the Pooling Agreement ought to be pooled. They believe that the way in which the affairs of the BCCI Group were conducted was such that the most (and possibly only) practicable and efficient way of liquidating the companies is to pool. We accept that there may well be good commercial reasons for pooling the assets and liabilities of certain at least of the members of the BCCI Group. This is a policy decision for the Creditors' Committee and the creditors.
- 6 Under English law, assets of BCCI SA in the UK must be shared between the worldwide creditors of BCCI SA totalling some US\$6 billion who prove in accordance with English rules. The Court has power to make the English liquidation ancillary to the Luxembourg liquidation so that creditors need only prove in Luxembourg. However, under English law assets of BCCI SA do not have to be made available to creditors of BCCI Overseas totalling approximately US\$4.8 billion apart from the proposed pooling arrangement. Creditors need to be satisfied either that the prospective dividend payable to creditors of BCCI Overseas is broadly comparable to the prospective dividend payable to creditors of BCCI SA or alternatively that the affairs of the two companies are so intermingled that it is impractical to spend time and money attempting to separate them.

The estimated outcome according to the liquidators is that in the absence of a settlement (disregarding potential claims against Abu Dhabi) non ring fenced creditors of BCCI Overseas would receive a dividend of approximately 10% and non ring fenced creditors of BCCI SA would receive a dividend of approximately 24% (see Appendix 3.1) but these figures are based on deficient accounting records and take no account of costs.

- 7 In assessing the relative position of creditors of BCCI Overseas and creditors of BCCI SA, a substantial number of jurisdictions involved will ring fence assets in their own territories and use them to prefer local creditors. In many of such cases, local creditors stand to receive substantial dividends and are unlikely to join the proposed pooling arrangements or to agree the proposed compromise. According to figures supplied by the liquidators (Appendix 3.1 to this Report) the problem of ring fencing is particularly acute in the case of BCCI Overseas and relatively modest in the case of BCCI SA particularly if the UAE is excluded. Of the total creditors of BCCI Overseas, it is likely that creditors totalling US\$1.5 billion will receive special treatment from their own jurisdictions.

- 8 The way in which the pooling arrangements are proposed to be effected is by an agreement between the relevant companies and their liquidators, which agreement is to be sanctioned by the Courts in England, Luxembourg and the Cayman Islands. We are concerned by decisions such as *Re Trix Limited* [1970] 3 All ER 397 where an application by liquidators to distribute companies' assets otherwise than strictly in accordance with creditors' rights under English insolvency law was dismissed. The Court held that the way to achieve this is by a scheme of arrangement under what is now the Companies Act 1985, s425. Plowman J said:

"The matter is one which the creditors should decide for themselves and on which they are entitled to express their views at a meeting or in Court. However convenient it may be for the liquidators to have a compromise sanctioned by the Court, it is, in my judgment, wrong in principle to

allow that course to be taken, for none of the persons affected has had any opportunity of being heard to challenge it - indeed the whole object is to preclude such a challenge. On the other hand, if a scheme were brought in, every creditor would have an opportunity of voting for or against it and, if he thought fit, of challenging it before the Court when the petition to sanction it was heard."

- 9 Accordingly, on the information which is presently available to us, we believe that:
- (a) on the assumption that the reasons put forward by the liquidators for pooling assets are correct, the assets and liabilities of certain at least of the companies in the BCCI Group ought to be pooled; but
 - (b) the English Court may well require the pooling arrangements to be effected by means of a scheme of arrangement under the Companies Act 1985, s425 in order to protect those creditors who dissent from the commercial decision to pool.

Apart from the narrow legal point, the Creditors' Committee may agree with Plowman J that a mechanism is required for canvassing the views of creditors generally. However, that should not stop the Committee forming its own view on the Proposals and making recommendations.

- 10 Under s425, the Court has power to sanction an arrangement between a company and its creditors. For this purpose, "company" includes a company which can be wound up in England and therefore includes BCCI SA (but not BCCI Overseas). The procedure is for meetings of the various classes of creditors to be convened. The arrangement will be binding on all creditors if:

- (a) a majority in number representing three quarters in value of each class of the creditors who are present in person or by proxy vote in favour of the arrangement; and
- (b) it is sanctioned by the Court.

S426 provides for an explanatory statement to be sent to the creditors to summarise the arrangement and explain why it is proposed.

- 11 We question whether it is practical to have a scheme of arrangement in connection with the Proposals in their present form not least because this would involve calling class meetings of a large number of creditors with potentially differing interests. For example, creditors with direct claims against the Abu Dhabi Parties may form a separate class from those who do not have such claims. If a scheme of arrangement is ordered by the Court, the Proposals would need to be modified.

We understand the liquidators have been advised by Counsel that it is possible to devise a procedure to overcome the legal obstacles to pooling described above but we advise the Committee to press for this issue to be resolved by Court direction in the relevant jurisdictions at the earliest opportunity if commercially they consider this to be in the best interests of creditors.

- 12 The mechanics of the pooling arrangements are that the liquidators of the various companies place the proceeds of all realisations in the pool which is reviewed periodically to determine what distributions can be made to creditors. However, the admission of claims against the pool is to depend on the law of the country of incorporation of each company which takes part in the pool. This has the effect of protecting creditors of BCCI Overseas who wish to hide behind numbered accounts. We are unclear how this is reconciled with the screening procedures required by the US Authorities. UK creditors may feel the need for greater control over who can claim against the pool. The Luxembourg Liquidators and Luxembourg Court will

control the extent to which creditors of BCCI SA can prove against pool assets. The English Liquidators state that whilst the laws of England and the Cayman Islands are substantially the same for this purpose, the law of Luxembourg is materially different.

Ancillary Liquidations

- 13 It is proposed to make the English liquidation of BCCI SA ancillary to its liquidation in Luxembourg. This is a condition of the proposed Pooling Agreement. The English Court has a discretion so to order under the normal principles of comity (*Re Commercial Bank of South Australia* (1886) LR 33 Ch D 174; *Re English, Scottish and Australian Chartered Bank* [1893] 3 Ch 385; *Re Vocation (Foreign) Limited* [1932] 2 Ch 196; *Felixstowe Dock & Railway Co v US Lines Inc* [1987] 2 Ll LR 76). In the latter case, Hirst J, after considering the earlier cases, said:

"The English practice is to regard the Courts of the country of incorporation as the principal forum for controlling the winding up of a company but that, in so far as that company has assets here, the usual practice is to carry out an ancillary winding up in England in accordance with our own rules, while working in harmony with the foreign Courts".

The reference to English Courts carrying out the ancillary winding up "in accordance with our own rules" stems from a series of cases which establish that, although the English Courts may be carrying out an ancillary winding up, they must do so in accordance with English rules (*Re English, Scottish and Australian Chartered Bank* (supra); *Re Suidair International Airways Limited* [1951] 1 Ch 165; *Re Hibernian Merchants Limited* [1958] 1 Ch 76; *Re Oriental Inland Steam Co* (1874) LR 9 Ch App 557).

Thus, in the *Suidair* case, Winn-Parry J said:

"It appears to me that the simple principle is that this Court sits to administer the assets of the [oversea] company which are within its jurisdiction, and for that purpose administers, and administers only, the relevant English law; that is, primarily, the law as stated in the Companies Act 1948 [now the Insolvency Act 1986], looked at in the light, where necessary, of the authorities. If that principle be adhered to, no confusion will result. If it is departed from, then for myself I cannot see how any other result would follow than the utmost possible confusion".

- 14 English rules provide for the assets of an insolvent company to be applied in payment first of preferential creditors and then *pari passu* amongst all unsecured creditors worldwide. The Court would accordingly need to be assured that the Luxembourg Liquidators would apply the assets in this way. Essentially, the liquidators will need to convince the Court that:
 - (a) there are substantial benefits to be obtained by the unsecured creditors if all funds are paid to the Luxembourg Liquidators; and
 - (b) it will not prejudice the rights which unsecured creditors would have under English law.
- 15 As far as (a) is concerned, there are clearly advantages in dealing with worldwide creditors centrally. The alternative would be to bar out creditors who did not prove in England irrespective of what proofs they had delivered elsewhere. This is a form of ring fencing practised in, for example, France and Germany.
- 16 As far as (b) is concerned, it will be necessary to ensure that, under Luxembourg insolvency rules, unsecured creditors are treated in the same way as they would be under English law. The English Liquidators state that whilst the laws of England and the Cayman Islands are substantially the same for this purpose, the law of Luxembourg is materially different. There

is uncertainty over differences in approach to admission of claims to proof, trust claims and set-off. It is also likely that interest provable in the liquidation will be different depending on whether English or Luxembourg rules are applied.

The Creditors' Committee needs to consider how comfortable it is in allowing assets to come under the control of the Luxembourg Liquidators. We understand that the law of Luxembourg contains special procedures for credit institutions under which the court can vary the normal Luxembourg Insolvency Rules to some extent. In our view, it needs to be ascertained precisely what rules and procedures will be applied in Luxembourg in this particular matter and which BCCI Group companies are to be admitted to share in the pool before creditors agree to the English liquidation being made ancillary to the Luxembourg liquidation. The alternative would be some form of pooling of the assets of BCCI SA under the control of liquidators of BCCI SA in England and Luxembourg applying principles of hotchpot to ensure creditors are treated rateably. Such an arrangement should be possible without putting a large number of English creditors to the trouble of proving their claims in Luxembourg in accordance with Luxembourg law.

Special Treatment

- 17 One of the less satisfactory aspects of the Proposals is that certain creditors of branches in the UAE are to receive special treatment and not simply be dependent on a dividend from the pool. It is likely that branches in other jurisdictions will similarly opt out of the pool due to ring fencing (see paragraph 7). Furthermore, it is proposed to exclude from the Abu Dhabi compensation all creditors who fail to release their personal claims against the Abu Dhabi Parties (see para 18 below) and also certain excluded creditors such as the tax authorities. It may, therefore, not be possible to satisfy the Courts in England, Luxembourg and the Cayman Islands that the Proposals accord with the fundamental principle that ordinary creditors rank *pari passu*.

Release of Creditors' Claims

- 18 The Proposals entail BCCI Group companies and the Government of Abu Dhabi releasing each other from claims in consideration of the Government of Abu Dhabi paying by instalments approximately US\$1.7 billion to a paying agent but only for the benefit of those creditors of BCCI Holdings, BCCI SA, BCCI Overseas or CFC who release any claim they may personally have against the Abu Dhabi Parties. It was a condition of settlement imposed by the Government of Abu Dhabi that US\$7 billion of creditors should release any claim which they may personally have against such persons and that payments out of the fund should only be made to those creditors who did so release.

Our concern is that BCCI SA is releasing claims which, if successful, would swell the assets of BCCI SA for the benefit of *all* its creditors in consideration for payments to *some* creditors of BCCI SA - ie those who do not have or agree to waive their own personal claims against BCCI SA. This would offend against the basic insolvency principle of *pari passu* sharing of an insolvent company's assets amongst its creditors. We question whether the liquidators can exclude creditors from sharing in assets of the estates and in particular whether the Court will sanction such an arrangement having regard to the unfair prejudice to creditors of BCCI SA who do have strong personal claims against the Abu Dhabi Parties and to rule 4.181 of the Insolvency Rules 1986 which requires creditors (other than preferential creditors) to rank equally between themselves. The Proposals do not attempt to compensate creditors who decline to release their claims out of other assets in the liquidations by imposing any form of hotchpot.

- 19 This Report does not consider the likely success of claims by individual creditors against the Government of Abu Dhabi, although some assessment of the strength of such claims is necessary in order to evaluate the Proposals. We doubt whether the liquidators have the information to assess individual creditors claims against the Abu Dhabi Parties and we have been told that

they have not carried out a detailed investigation of the facts which might give rise to such claims.

20 The Liquidators support the Proposals because they believe that it is better to obtain cash and the promise of further instalments from the Government of Abu Dhabi rather than to litigate. If the Government of Abu Dhabi is only prepared to settle on the basis that some only of the creditors of BCCI SA will benefit from the settlement, we do not believe that this concept ought to be accepted. The principal benefit which the Liquidators see from the proposal is an increase to 30-40 per cent of the estimated return *to those creditors who waive their own claims against Abu Dhabi*. If the Government of Abu Dhabi is prepared to make a payment in consideration for the release of claims by BCCI SA, the proceeds of that settlement ought to be paid to the liquidators of BCCI SA for payment to all its creditors *pari passu*.

21 If the Proposals are not modified, it may become necessary for the payment by the Government of Abu Dhabi to be apportioned between:

- (i) claims by BCCI SA and other BCCI Group companies; and
- (ii) claims by individual creditors.

To the extent that the payment is consideration for the release of claims by BCCI Group companies, the payment ought to be applied *pari passu* amongst all the creditors of those companies; to the extent it is for release of individual claims, it should be applied to the creditors concerned.

In our view, such a solution is impractical as it would require assessment of the merits of a multiplicity of individual claims. We conclude that the Proposals are unfair.

Conditions Precedent

- 22 It is a condition precedent to the Proposals not only that they receive Court approval in England, Luxembourg and the Cayman Islands but that creditors owed US\$7 billion agree - though this condition may be waived by the Government of Abu Dhabi even if the Proposals only receive minimal support. We are concerned about the prospects of these conditions being met whatever view the Creditors' Committee may take. If the Proposals are accepted by creditors owed less than US\$7 billion, the Government of Abu Dhabi effectively has an option to be bound or to renegotiate.
- 23 We anticipate that the favourable treatment accorded to creditors of branches within the UAE under the UAE Branch Liquidation Agreement may cause other creditors of the UAE branches whose debts are not properly recorded in the official books within the meaning of that Agreement to press for comparable treatment. Moreover, creditors of other Arab branches may feel that their countries can exercise just as much political pressure on the Government of Abu Dhabi as the UAE and for that reason reject the proposals.
- We have commented in paragraph 7 and Appendix 3.1 on other jurisdictions which are preferring local creditors by various forms of ring fencing. Such local creditors may reject the Proposals for that reason.
- 24 Creditors who have direct personal claims (real or imagined) - perhaps under Comfort Letters or for misrepresentation or breach of warranty - against the Abu Dhabi Parties are required to release those claims in order to share in the pool. Those with enforceable claims may well decide to reject the Proposals.
- 25 The Proposals envisage payment by instalments. Creditors will consider not only maximising their eventual recovery but the speed with which it is proposed that they receive a substantial first dividend. The concept of payment by instalments implies that distributions may be some time away

which decreases the attraction of the Proposals to creditors. There is also a residual risk that instalments may not be paid (see paragraph 37).

The Contribution Agreement

26 Subject to the conditions precedent, the Government of Abu Dhabi agrees to pay an adjustable sum of approximately US\$1.7 billion into a contribution fund by instalments of which US\$500 million is not payable until 20th June 1993 and US\$400 million until 20th June 1994. If realisations by the liquidators exceed US\$2.5 billion, the Government's contribution will be reduced. If liabilities exceed US\$10 billion, the Government's contribution will be increased by 25% of the excess; if they are less than US\$10 billion the contribution will be reduced by 25% of the shortfall subject to a maximum increase or reduction of US\$500 million. On the best estimates presently available, the compensation is likely to be US\$1.7 billion subject to fulfilment of the conditions precedent but there is a risk that it will be reduced under the above provisions.

27 In addition to the proposed compensation, it is proposed that the Majority Shareholders release all claims against the BCCI Group companies including claims (believed to be vested in the Ruler of Abu Dhabi) of approximately US\$2.2 billion for deposits with the ICIC Group alleged to have been misappropriated by the BCCI Group. These claims are alleged to be proprietary rather than simply as creditors on the basis that BCCI SA was knowingly party to the dishonest application of the funds. It did after all plead guilty to fraud in the United States of America. The counterclaim has not been pursued vigorously and its formulation is imprecise.

We suspect the counterclaim is a matter of some embarrassment to the Ruler of Abu Dhabi who seems reluctant to make available to the liquidators the details and documents necessary to prove it. In the absence of such evidence, although it is likely that substantial sums have been misappropriated, it does not follow that they can be traced through into the assets of BCCI SA recovered by the liquidators. The transactions were

complex (in an attempt to conceal the fraud) and may be more closely linked with BCCI Holdings or BCCI Overseas. It may also be questioned whether sources close to the Ruler were sufficiently implicated in the misfeasance to be a bar to equitable remedies. If the counterclaim is litigated, the Court would need to consider whether the Ruler was sufficiently free of blame to qualify for equitable remedies. This would be anathema to the Government of Abu Dhabi which is jealous of its international reputation. It has not assisted the liquidators and may be in breach of insolvency legislation in various countries. - As part of the rescue arrangements in 1991, the Government of Abu Dhabi waived all existing claims against BCCI Holdings and its subsidiaries.

- 28 In assessing the value of the Proposals, there should be deducted from the sum offered, the value (if any) of the 40% interest in UNB being transferred by BCCI Holdings to the Government of Abu Dhabi for nominal consideration and the claims against ICIC which the liquidators have agreed to waive or subordinate as part of the settlement. Account should also be taken of the claims of the UAE Branches, UNB and the ADIA admitted to proof at least to the extent that such claims would not have been admitted to proof other than as part of the Proposals. There should also be deducted the value of the claims against auditors, solicitors and others the conduct of which is proposed to be transferred to the Government of Abu Dhabi and from which they are to receive a 50% share of any recoveries. We have reservations about the wisdom of transferring the conduct of these actions to the Government of Abu Dhabi but are informed that they are pursuing them vigorously. These claims - some of which may be litigated in the United States of America - are potentially valuable particularly as the auditors failed to detect the bank within a bank constituted by ICIC. We are informed that the Government of Abu Dhabi agreed to indemnify BCCI SA and the auditors against all losses up to December 1989 and this may impact on the willingness of the Government of Abu Dhabi to pursue certain of the claims against Price Waterhouse in respect of 1989.

- 29 We have not been given access to sufficient documents to be able to evaluate likely recoveries from the auditors and others but consider that such claims could be substantial. On the other hand, the auditors were led to believe that the BCCI Group had the support of the Government of Abu Dhabi.

In view of the time constraints imposed on us, we cannot undertake a detailed analysis of likely recoveries from auditors and others in respect of the matters referred to in paragraph 28. Such matters (like the counterclaim referred to in paragraph 27) contain many imponderables and there are potential defences to both. From a practical standpoint, we suggest that the Creditors' Committee adopts a broad brush approach and treats the Abu Dhabi counterclaim as having some value but a value lower than the claims against the auditors, solicitors and others referred to in paragraph 28. This assessment is based in part on our belief that the Government of Abu Dhabi would prefer to settle rather than subject its conduct to Court scrutiny.

If creditors consider that the above assessment undervalues their rights against the auditors, they may themselves be able to pursue the auditors particularly in the United States of America.

Settlement

- 30 It comes to this, that the liquidators and creditors do have substantial claims against the Abu Dhabi Parties set out in detail in Part 2 of this Report. These claims substantially exceed in amount the compensation offered in the Proposals which in the circumstances cannot be regarded as generous. However, certain of these claims will not be easy to prove. There are arguable defences and it will be difficult to enforce recovery. The Government of Abu Dhabi for its part has taken into account in the offers it has made the fact that it may still face claims from creditors who decide not to accept the Proposals. Its weakness is that it wishes to preserve its international reputation and be perceived as having behaved in an acceptable manner.

- 31 We start from the premise that on any footing US\$1.7 billion is a very substantial sum of money. Abu Dhabi is an oil rich state but its Ruler has already suffered substantial losses in relation to the BCCI Group and there is a limit to the amount of further moneys the Government of Abu Dhabi will inject into the situation.
- 32 Against this, it is necessary to look both at the nature and size of the claims which the liquidators and any creditors who accept the offer must waive and at the political realities. In particular:
- (a) The US\$650m payable under the Subscription Agreement with CFC dated 7th June 1991 was not paid despite notification that payment was being made on the 4th July 1991. This claim should be regarded as relatively strong but it is a claim by BCCI Holdings or CFC rather than BCCI SA.
 - (b) The refinancing package of 22nd May 1991 was agreed under which promissory notes and guarantees were issued with a value in the order of US\$3.7 billion. We are informed that the Government of Abu Dhabi had earlier given a commitment to indemnify BCCI SA against any loss up to 31st December 1989 and it would seem that the May 1991 rescue package was intended to meet this obligation. The liquidators do not have possession of the promissory notes, approximately US\$1.15 billion of which were discounted for value prior to the liquidation of BCCI SA.

The Government of Abu Dhabi may assert that it should no longer have to honour the notes and guarantees because the regulatory authorities decided to place BCCI SA and BCCI Overseas in liquidation. However, the Government did receive the doubtful debts (which it knew were doubtful) and for which it has not paid and BCCI SA was allowed to continue to trade as a bank throughout 1990 and up to 5th July 1991 in reliance on the promises of support given by the Government of Abu Dhabi. The guarantees totalling US\$750

million and the promissory notes are governed by Abu Dhabi law and the Abu Dhabi courts have apparently ruled in favour of the Government of Abu Dhabi. The guarantees and promissory notes do provide a defence to the extent they were issued in respect of illegal loans such "as might be expected to damage the international reputation of the Abu Dhabi Government". The problem is that many of the loans are now alleged to have been tainted with illegality and it will not be easy to prove the extent to which the Government of Abu Dhabi was aware of the illegality in May 1991.

- (c) There clearly was substantial misfeasance involving vast sums but the question here is to establish precisely who (in addition to those directly involved) is liable for what occurred. We doubt that the Government of Abu Dhabi was itself responsible particularly as the Ruler lost substantial sums but it could be severely embarrassed if the issues are litigated.

The Creditors' Committee will appreciate that litigation is always a high risk, time consuming and expensive activity not lightly to be undertaken. Having said that the litigation would severely embarrass the Government of Abu Dhabi which would effectively stand accused of reneging on its obligations to the various regulatory authorities (and through the audited accounts to the creditors) to inject support funds into BCCI SA. The Government of Abu Dhabi may claim to have been released from its obligations by the actions of the regulatory authorities, but it has overlooked that BCCI SA was only allowed to continue to take deposits because of its promises of support and those depositors remain unpaid.

The Government of Abu Dhabi in our view is more likely to settle at this stage than after serious allegations have been pleaded against it. The Creditors' Committee should try to form a view of the amount the Government of Abu Dhabi is likely to pay to settle the matter having regard not only to legal issues but to the political and publicity pressures likely to occur.

- 33 The Creditors' Committee will see from Part 2 of this Report the difficulties of establishing legal liability. There is the further difficulty of enforcing any judgment and actually recovering compensation. This is why the Creditors' Committee may be inclined to accept the Proposals rather than litigate. It would be something of a gamble to litigate having regard to the size of the settlement offered.

Conclusion

- 34 Whilst a litigious solution would clearly be time consuming and expensive, we regard these factors as of limited relevance bearing in mind that even under the settlement proposals creditors should not expect a speedy payment. The proposed compensation is payable by instalments. The amounts involved far outweigh costs which could be incurred.
- 35 That said, there are substantial risks in litigating in that the Government of Abu Dhabi may decide to protect the defendants and become totally hostile and uncooperative. There will be many jurisdictions friendly to the Government of Abu Dhabi who would not assist in enforcing judgments against it - particularly if creditors in their own jurisdictions were treated reasonably. Moreover, whilst there was misfeasance and possible fraud, it does not follow that the Government of Abu Dhabi was implicated in it. We recommend the matter be settled before the Government of Abu Dhabi is put in a position where it feels compelled to litigate to clear its name.
- 36 On balance, assuming the facts given to us by the liquidators and others to be accurate and conscious that there are many documents we have not seen, we conclude that the amount offered in settlement is worthy of serious consideration by creditors though in no sense generous. The English Courts are reluctant to award very high damages. Other jurisdictions (especially the United States of America) are less inhibited but we are advised by US lawyers that penal damages will not be awarded against a sovereign state; it may be more difficult to enforce a US judgment outside the US and the Plea

Bargaining Agreement would potentially lead to the US authorities receiving undue benefit from any recoveries in the United States.

- 37 Having said that, we regard the exclusion from the compensation fund of creditors who do not release their personal claims as inherently unfair. We do not believe that the quantum of individual creditors' claims has been researched by the liquidators or that they are reflected at all in the proposed compensation.

We are uncomfortable about the proposed payment being by instalments. The promissory notes were not met and there can be no certainty the instalments will be paid, particularly if criminal charges or the publication of reports subject the Government of Abu Dhabi to the type of censure which it is paying to avoid.

We question whether the Proposals will be accepted by creditors owed US\$7 billion. This is a condition of the Proposals and without such acceptance there is no settlement on offer. This factor as much as any other causes us to advise that the Creditors' Committee should hesitate before commending the Proposals in their present form to creditors.

We question whether the Court will sanction the proposed pooling arrangements without a scheme of arrangement. The proposed subordination of the English liquidation to Luxembourg will also need to be reviewed to ensure that creditors are not prejudiced.

- 38 We anticipate that the Creditors' Committee will consider the matters referred to in paragraph 37, as subordinate in importance to the amount of compensation on offer. If we are correct in believing the Government of Abu Dhabi is concerned to preserve its international reputation, the real blame it faces is that BCCI SA was allowed to continue to take deposits after it was known that there were serious discrepancies. This arose because the auditors and bank regulators were led to believe that the Government of Abu Dhabi would inject financial support. In our view, the least that the Government should do (if its aim is to clear its reputation) is to inject the funds promised in May/June 1991 which are referred to in sub paragraphs

32(a) and (b) and which total US\$4.35 billion less the US\$1.15 billion of notes discounted for value by BCCI SA. This would give total compensation of US\$3.2 billion.

If the Creditors' Committee decide to reject the package comprising the Proposals, we recommend that they urge the liquidators to make a counter offer on the above basis but also raising the points in paragraph 37.

We expect a number of creditors will wish to accept the Proposals as they stand; a number will consider the compensation to be inadequate. The Proposals are finely judged and it is for members of the Creditors' Committee to accept or reject them taking into account not only the legal issues in this Report but their assessment of the likely recovery from the Government of Abu Dhabi if the Proposals are rejected.

Our own view is that the Proposals in their present form will not be accepted by sufficient creditors to satisfy the Government of Abu Dhabi. However, rejection carries grave risks and it is for the Creditors' Committee to decide whether it wishes to take those risks. If it does not, it should urge creditors to accept the Proposals. If it does, it should urge the liquidators to put forward counter proposals based in our view on paragraph 38 and authorise them to say that such counter proposals (assuming the Committee approves the details) have the backing of the Creditors' Committee and will be accepted by it in full satisfaction of the moral as well as legal obligations of the Government of Abu Dhabi.

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14th April 1992

The Members of the BCCI Creditors' Committee
and
their Solicitors

Dear Sirs,

Bank of Credit and Commerce International S.A. ("BCCI")

The purpose of this letter is to clarify how we propose to approach the task of advising the Creditors' Committee so as to enable them to make a recommendation to creditors on the proposed arrangements with the majority shareholders. We will attend a meeting with the Creditors' Committee tomorrow to discuss the suggestions made in this letter which will in any event require modification as we become familiar with the documents currently in course of production to us by the liquidators.

Our present view is that we should produce a written report covering the matters referred to below and that for the purpose of this report we should assume that the information supplied to us by the liquidators is correct. We may, of course, draw attention to aspects which seem to merit further investigation but time constraints will prevent us undertaking that investigation prior to the report.

In addition to the information supplied to us by the liquidators, we would welcome any input from individual members of the Committee or their solicitors on the various claims they see against the majority shareholders and on the merits of those claims and indeed on the merits of the proposals before the Committee.

We do urgently need the advice of lawyers in Luxembourg and in the Cayman Islands on the laws of wrongful trading, fraudulent trading, misfeasance and shadow directors in those jurisdictions. It is a matter for the Committee whether to make available to us advice from those jurisdictions which members may already have received or whether to ask us to instruct independent lawyers

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in those jurisdictions. If existing lawyers are made available to us, we may well wish to ask them supplementary questions.

We also anticipate instructing Counsel to review certain aspects of our report.

After an introductory section, we envisage the report covering the following matters:

Background

This will deal with the original attempts to rescue the Bank frustrated by the liquidation; the nature of the group and the assets and liabilities of the group so far as these can be ascertained from the liquidators; the present negotiations and in outline the claims against the majority shareholders, the present proposals and the pooling arrangements.

The proposals entail individual creditors surrendering their claims against the majority shareholders but the merits of individual creditors' claims will differ and we see this as outside the scope of our report.

Claims against the Majority Shareholders

The claims and their respective merits and evidential problems will be set out in the report. We have not read sufficient papers to know at this stage precisely what potential claims arise but they would seem to include:

- (a) misfeasance (and possibly worse) by certain directors. Under English law this would include wrongful/fraudulent trading but we need advice about the equivalent under the relevant Luxembourg/Cayman Islands laws. The question arises about the extent to which the majority shareholders are liable for the acts of the directors and generally as to the ability of the liquidators or creditors to enforce judgment and recover damages;
- (b) the Promissory Notes;
- (c) the failure to recapitalise the Bank; and
- (d) the merits (if any) of the counterclaim by the majority shareholders.

The above is the barest outline of claims against the majority shareholders and we would welcome our attention being drawn to any other rights of action which may exist.

14th April 1992

The Proposals

We will summarise the proposals for the Committee and comment on them. This advice we see as extending to the proposed pooling arrangement and the proposal to subordinate the UK liquidation to the Luxembourg liquidation.

Finally, there will be a conclusion containing our advice. In tendering this advice, we have it in mind that creditors will be concerned about how soon they are likely to receive a first dividend and also about maximising the ultimate recovery.

When the Committee has had the opportunity of considering the report, we recommend that there be a meeting of the Committee and its advisers with ourselves so that we can explain our advice and answer questions.

Yours faithfully,

James Lingard

P.S. Touche Ross have suggested that the Committee Meeting should adjourn at about 5 p.m. to our temporary premises at the Pavilion No. 3 Broadgate - best approached from Liverpool Street where it is at the far left hand corner of the Ice Rink next to the Security Pacific building. Solicitors to members of the Committee are welcome to attend this meeting if their clients so wish.

Part ADocuments viewed by Norton Rose
in the preparation of the Report

- 1 The Joint Liquidators' Reports to the English Court dated:
 - (i) 19 July 1991
 - (ii) 23 August 1991
 - (iii) 29 November 1991
 - (iv) 10 January 1992
 - (v) 16 March 1992
- 2 Orders of the English Court
- 3 Proposed Agreements with the Majority Shareholders being:
 - (i) Pooling Agreement
 - (ii) Contribution Agreement
 - (iii) Paying Agency Agreement
 - (iv) ICIC Overseas Agreement
 - (v) UAE Branch Liquidation Agreement
 - (vi) UAE Agreement
 - (vii) Litigation Agreement
 - (viii) Other ancillary documents
- 4 Judgements of the English Court
- 5 Various documentation relating to the Sandstorm restructuring (including summary prepared by Freshfields, the structuring plan dated 28 June 1991 and business strategy and copy promissory notes, guarantees etc.)
- 6 Expurgated and unexpurgated copies of Price Waterhouse's draft section 41 report to the Bank of England
- 7 Ring-fencing documents being foreign legal and Ernst & Young opinions concerning the ability of local branches of BCCI Group companies to distribute their assets to local creditors without pooling those assets with other BCCI Group branches and/or companies
- 8 Documents relating to the seizure of the Promissory Notes
- 9 Memorandum and Articles of Association of:
 - (i) BCCI Holdings
 - (ii) BCCI SA
 - (iii) BCCI Overseas
 - (iv) CFC
 and in respect of companies (i) - (iii) lists of shareholders
- 10 CFC refinancing Report to Grand Cayman Islands Court and 14 Court Orders
- 11 3 Reports of the ICIC Overseas Liquidators to the Cayman Islands Court and other draft reports concerning ICIC Overseas
- 12 47 "Day Files" of correspondence
- 13 US Plea Agreement and publications with background information
- 14 Federal Reserve Board proceedings - Washington DC (including 3 Consent Orders pursuant to the Federal Deposit Insurance Act)
- 15 Proceedings against BCCI SA in Middle District of Florida including 2 Plea Agreements and the Indictment of Defendants on Charges (inter alia) of Money Laundering and Racketeering

- 16 Documents concerning proceedings by New York District Attorney relating to a scheme to defraud, falsifying business records and grand larceny by BCCI Group companies and individuals
- 17 Investigations by the Senate Foreign Relation Committee's sub-committee on terrorism, narcotics and international operations as related to the BCCI Group
- 18 Abu Dhabi Court documents being:
 - (i) Draft translation of proceedings of Abu Dhabi Federal Court of first instance dated 18 July 1991
 - (ii) Letter summarising order appointing UAE receivers dated 2 July 1991
 - (iii) Draft translation of UAE Judgment dated 28 July 1991
 - (iv) Draft translation of Judgment relating to judicial custodianship dated 28 July 1991
(*All these relate to suit no. 1560*)
 - (v) Order permitting retention of Bank's advocates dated 9 October 1991
(*This relates to suit no. 1603*)
- 19 Correspondence regarding the seized Promissory Notes
- 20 Coopers & Lybrand Deloitte report dated 12 August 1991 including report and appendices and statement of affairs as at 5 July 1991 of BCCI Overseas Oman branches
- 21 Board minutes of meetings of BCCI Overseas held between 25 November 1975 and 22 November 1989
- 22 Briefing paper relating to David Youngman and his investigations
- 23 CFC board minutes including annual returns dated 10 August 1976 to 31 December 1986
- 24 Cayman Islands Court Orders (e.g. Appointments, Directions, Affidavits, Orders, Petitions, Summonses and Notices of Motion dated between 5 July 1991 and 3 September 1991 concerning winding up of BCCI Overseas, ICIC Overseas and their subsidiaries and CFC)
- 25 Confidential briefing note dated 22 July 1991 by the Cayman Attorney General concerning revocation of BCCI Group's banking and trust licenses in the Cayman Islands
- 26 Luxembourg Court Order setting out the powers and duties of Mr Smouha
- 27 Correspondence between various parties relating to access to Kew
- 28 Notes of interviews with Mr Naqvi made by the Investigation Committee
- 29 Affidavits sworn in the English proceedings by various persons
- 30 Note concerning the Portfolio Account
- 31 Valuation Report dated 31 March 1989 prepared by J.B. Benbourt & Co., Chartered Accountants, of Cayman which seeks to determine what returns the portfolio account has achieved and the value of its investments as at 31 March 1989
- 32 Documentation regarding the Portfolio Account
- 33 3 letters concerning ICIC Overseas and the arrest of the MV Aeolian
- 34 Incomplete board minutes of BCCI (Emirates) dated 9 July 1991
- 35 Price Waterhouse's report dated 27 March 91 and restructuring plan for BCCI SA Global Option on 28 June 1991

- 36 Attachment to UAE Ministry of Justice Letter of 16 July 1991 containing record of preventative reservation of the Promissory Notes on civil case no. 1560 and (presumably) the same in Arabic
- 37 Correspondence from Price Waterhouse to BCCI SA dated 30 March 1990 (concerning certain issues affecting the BCCI Group's Financial Statements for 1989) and 1 August 1990 (concerning the report to be made by Price Waterhouse to the College of Banking Supervisors on 5 October 1990 regarding outstanding issues of the 1989 audit of the BCCI Group and regarding the Group's financial position)
- 38 Documents, correspondence and materials received by LWD from Allen & Overy on 25 October 1991 concerning CCAH
- 39 Audit Committee Report dated 1 March 1991
- 40 Board Minutes of BCCI Holdings for the 25 January 1990, 12 March 1990 and 20 March 1990

Part B

Documents thought relevant and in existence not
seen by Norton Rose in the preparation of the Report

Documents potentially relevant to alleged fraud and misfeasance issues**1 U.S. Proceedings**

Indictments, pleas, orders, affidavits, transcripts and other documents produced to the BCCI Group, its lawyers or other representatives in the course of the following proceedings in particular:

- 1.1 Proceedings commenced by the U.S. Attorney's office for the District of Colombia in connection with the acquisition and ownership of CCAH
- 1.2 Proceedings before the Federal grand jury in the Southern District of Florida relating to CenTrust and David Paul
- 1.3 Investigations by the Senate Banking Committee's Sub-Committee on Consumer and Regulatory Affairs so far as they relate to the BCCI Group
- 1.4 Proceedings before the United States District Court for the Southern District of Florida entitled *Republic of Panama v. BCCI Holdings (Luxembourg) SA et al*
- 1.5 Proceedings in the United States District Court for the Southern District of Florida entitled *Sturge v. Bilbeisi et al*
- 1.6 Proceedings of the House Judiciary Committee's Sub-Committee on Crime and Criminal Justice chaired by Charles E. Schumer to the extent that they relate to the BCCI Group
- 1.7 Proceedings by the Committee on Banking, Finance and Urban affairs of the U.S. House of Representatives

2 Proceedings in other jurisdictions

- 2.1 The application to impose the judicial custodianship
- 2.2 Any other documents relating to non-U.S. proceedings which may be available and have not been supplied

3 Reports

- 3.1 Page 1 of handwritten analysis marked "ECT1" relating to bogus loans at ICIC (we have pages 2 and 3)
- 3.2 Separate report on the late M. Hamoud referred to above
- 3.3 Details of investigation into lending by BCC (MISR) referred to in analysis

4 Board Minutes

The following entities' board minutes:

- 4.1 BCCI Holdings
- 4.2 BCCI SA
- 4.3 The ICIC Foundation

5 Correspondence regarding claims by or against the Abu Dhabi authorities

- 5.1 Correspondence with the Abu Dhabi authorities or their lawyers relating to claims
- 5.2 Correspondence with the creditors and their lawyers relating to claims

Documents potentially relevant to Promissory Note issues-

6 Reports

- 6.1 The Price Waterhouse report of February 1991 referred to in the side letter to the Loan Assignments
- 6.2 Any documents (other than document 22 in Part A of this Appendix and his terms of reference) relating to the Investigation carried out by David Youngman

7 Other documents/Information

- 7.1 Confirmation of the date of the Investigations Committee Report on ICIC

Documents potentially relevant to the CFC Claim

- 8 Report of the Cayman Liquidators dated 13 December 1991
- 9 Draft Subscription Agreement dated 6 March 1991
- 10 Letter from Inspector of the Bank of Cayman Islands to BCCI Overseas dated 7 March 1991 giving consent to the issue of preference shares
- 11 Certified true copy of Board Resolution of CFC dated 30 May 1991 approving the terms of the Subscription Agreement
- 12 Certified copy or conformed copy of the "Final" Subscription Agreement dated 7 June 1991
- 13 Any evidence of the CFC loan of US\$13.7m to Prince International Holdings Limited
- 14 The LWD report to TKB referred to in LWD's memo of 9 October 1991
- 15 The Abu Dhabi legal opinion presented to LWD in response to LWD letter of 9 October 1991
- 16 Report prepared by LWD on CFC dated 4 October 1991
- 17 Preliminary report on CFC dated 22 July 1991 prepared by Ian Wight (Liquidator)

Documents potentially relevant to the possible
Abu Dhabi authorities' counterclaim

- 18 All claims instituted against the BCCI Group or ICIC wheresoever and/or letters before action received and all relevant inter-solicitor correspondence
- 19 All relevant documents evidencing details of all monies alleged to have been paid by the Abu Dhabi authorities to ICIC and copies of the relevant entries in ICIC's deposit book and/or accounts and/or ledgers and/or financial statements
- 20 Documents relating to the purpose of the loans (e.g. copies of relevant loan contracts, minutes of authorised body depositing funds, etc)
- 21 Documents relating to whether the Abu Dhabi authorities are secured creditors or not
- 22 Documents showing the names and positions of all relevant persons responsible for making the loans or accepting the deposits
- 23 Documents relating to the efforts taken by the liquidator to trace the relevant funds and results achieved to date
- 24 Documents evidencing the funding, holding, or disposition of the funds the subject of the counterclaim themselves, the BCCI Group or associated companies and efforts taken by the Liquidator to verify the position

History of the Release of Documents

The documents to which we have had access in the preparation of this Report were provided to us by Lovell White Durrant ("LWD") acting on behalf of Touche Ross, the liquidators of the BCCI Group. These documents are listed in Part A of this Appendix. The documents which we have not seen but, in our opinion are, or could be, relevant to the matters raised in this Report are listed in Part B of this Appendix although, for obvious reasons, we cannot be certain that this list is complete.

The release of a complete set of documents which could be of significant interest to the creditors has been hindered by considerations of legal or other professional privilege and as a result of court proceedings being conducted in various jurisdictions.

On 10 April 1992 two copies of each of the following were provided: (i) the English Liquidators' reports to the Court; (ii) the judgements of the English Court; (iii) the English Court Orders; and (iv) a volume of the Agreements comprising the Proposals.

On 14 April 1992 LWD made available to us: (i) legal advice concerning the ability of local branches of BCCI to "ring fence" assets; (ii) the restructuring plan and business strategy concerning the "Sandstorm" restructuring; (iii) the seizure of the promissory notes; (iv) corporate documents (e.g. memoranda and articles of association) of certain companies in the BCCI Group; (v) the Subscription Agreement between the Government of Abu Dhabi and CFC and related papers; (vi) reports of Price Waterhouse and others to the Cayman Islands Court concerning BCCI Overseas and ICIC Overseas; and (vii) the so-called LWD "Day Files" which comprised 40 ring-binder folders containing the material (correspondence, minutes etc.) collected by LWD in Abu Dhabi. These files had been disclosed in Court proceedings in the United States. On 15 April 1992, LWD attended the Pavilion to explain to us the rationale behind the compilation of the Day Files. The material contained in the Day Files was scrutinised but little of it was of any relevance.

On 16 April 1992 we received a copy of the unexpurgated version of Price Waterhouse's draft section 41 Report to the Bank of England, the U.S. Plea Agreement and certain publications giving background information on the BCCI Group.

On 23 April 1992 we received documents: (i) relating to proceedings in the United States concerning BCCI; (ii) relating to proceedings in the United Arab Emirates concerning BCCI branches located there; (iii) relating to proceedings in the Cayman Islands concerning BCCI Overseas, CFC and ICIC; (iv) the Luxembourg Court Order setting out the scope of the powers and duties of Mr Smouha; (v) Coopers & Lybrand Deloitte's Report concerning the branches of BCCI Overseas in Oman; (vi) correspondence between lawyers concerning the promissory notes, the proposed settlement with the Majority Shareholders, ring-fencing and bank confidentiality laws; (vii) notes of interviews with Mr Naqvi; (viii) certain board minutes of BCCI Overseas and of CFC; (ix) the memorandum

and articles of CFC; (x) correspondence relating to access to Kew; (xi) briefing note relating by the Cayman Island Attorney General concerning the revocation of the BCCI Group's banking licence in the Cayman Islands; and (xii) briefing paper relating to David Youngman's investigations.

On 24 April 1992 the remaining 7 Day Files which had not been covered by the U.S. disclosing order were made available to us. These Day Files were delivered with a "list" of their contents prepared by LWD describing the first and last document contained in the folder; most of the final 7 folders did not begin with, end with, or even contain, the documents described by LWD in this "list".

On 24 April 1992 we received in separate consignments:

- (a) copies of certain affidavits sworn by various persons in the petition of the Bank of England in the UK proceedings;
- (b) a copy of Touche Ross' Financial Management Report No. 4;
- (c) sundry documents being: (i) a folder containing (another copy of) the Liquidators' Report dated 16 March 1992, summary schedules of assets and liabilities of BCCI Group companies and a financial management report dated 30 June 1991 summarising the then current position of the estimated realisable assets and likely creditors of BCCI Holdings, BCCI SA, BCCI Overseas and CFC; (ii) details of the Portfolio Account of the Ruler and Crown Prince of Abu Dhabi and a portfolio management valuation report (as referred to in item 31 in Part A to this Appendix); (iii) certain letters concerning ICIC and the arrest of the MV Aeolian; (iv) an incomplete copy of the Board Minutes of BCCI (Emirates) dated 9 July 1991; (v) a copy of the Price Waterhouse's Report dated 27 March 1991 relating to the preliminary restructuring proposals referred as Sandstorm and the restructuring plan for BCCI SA Global Option dated 28 June 1991; (vi) Record of Preventative Reservation of the Promissory Notes in connection with the civil suit No. 1560; (vii) certain correspondence from Price Waterhouse to BCCI London dated 30 March 1990 and 1 August 1990; and (viii) files containing materials and correspondence involving CCAH and the Sandstorm restructuring.

On 28 April LWD sent to us a copy of an Audit Committee Report dated 1 March 1991.

On 30 April LWD sent us the Board Minutes for BCCI Holdings referred to as item 40 in Part A of this Appendix.

Certain correspondence passed between Norton Rose and LWD concerning the existence and release of documentation. Elements of the correspondence relevant to specific items is summarised below.

(i) Board Minutes

In a letter dated 14 April 1992, LWD made reference to the existence of board minutes of the BCCI Group but stated that the bank secrecy

laws of Luxembourg and the Cayman Islands prevented them from releasing them to us. The two means by which it was suggested that we could have access to these Minutes would have prevented us from revealing details contained therein and in particular naming individuals referred to therein. We declined access to the board minutes on these terms. LWD have subsequently provided us with Board Minutes comprising item 40 in Part A of this Appendix.

(ii) Unspecified documents/information we have not seen

On 16 April 1992 we wrote to LWD: (i) reminding them of the Court Order authorising and directing their clients to make available to us documents required for the purposes of the Creditors' Committee; (ii) seeking clarification of the documents which would be made available to us; and (iii) asking how LWD proposed to provide us with relevant information (e.g. whether documents would be provided on a claim by claim basis). LWD confirmed by telephone that no files containing all the documents relevant to the particular claims existed.

On 21 April 1992 we requested further documents/information which we thought would be relevant to us in the preparation of the Report and the release of which would not, we believed, be prevented by legal professional privilege. We have received some, but not all, of these documents and have not been informed as to whether the others have not been supplied to us because of legal privilege or, in fact, do not exist.

(iii) The documents at 100 Leadenhall Street

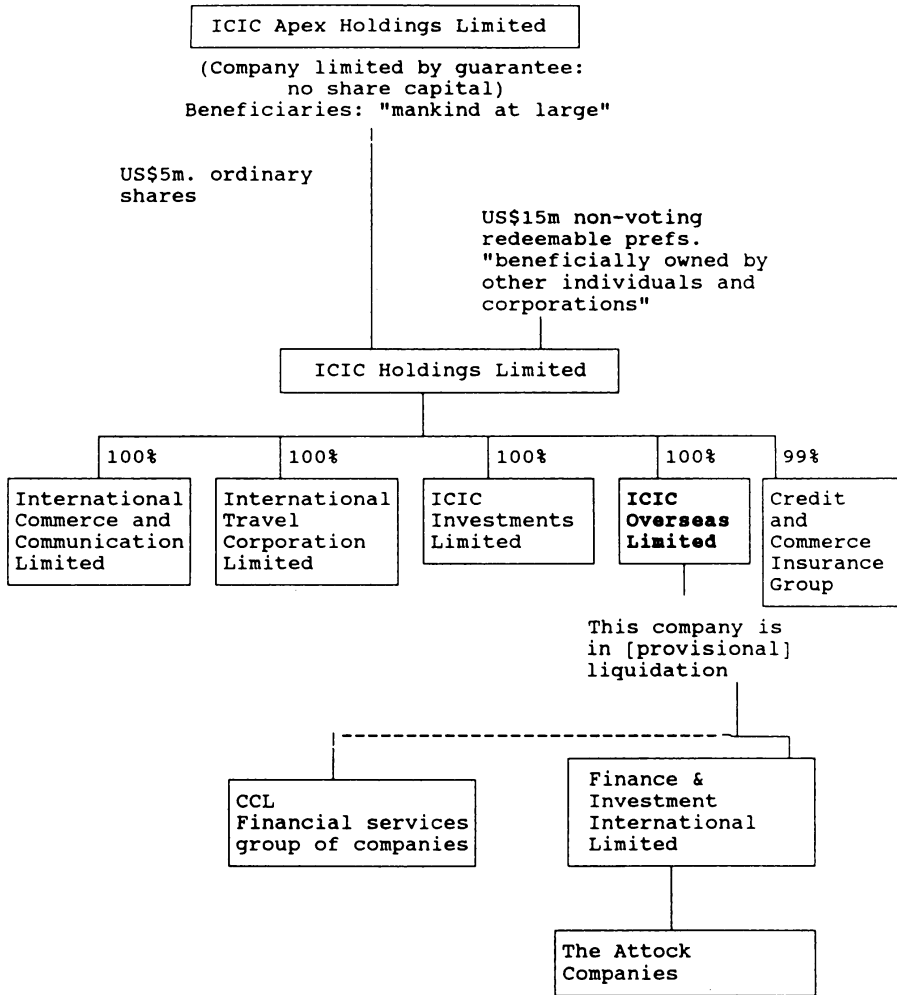
In a letter of 21 April 1992 LWD was stated that documents located at BCCI's London headquarters (at 100 Leadenhall Street) would be made available to us. However, at the date of this Report, we have not been allowed access to 100 Leadenhall Street.

(iv) The documents at Kew

We have not received a response to our letter of 24 April 1992 to LWD requesting access to the documents at Kew. Our understanding is that Kew contains a vast number of documents which could be relevant to the matters raised in the Report.

	UNAUDITED 30 JUNE 91 \$'M	UNSIGNED (PARTIALLY AUDITED) 31 DEC 90 \$'M	AUDITED 31 DEC 89 \$'M
<u>ASSETS</u>			
CASH	102 A 5/2	94	88
CERTIFICATES OF DEPOSIT	511	654	1,657
DUE FROM BANKS	3,571 } A 5/2	4,802	8,412
INVESTMENTS IN SECURITIES	1,460 A 5/2	1,419	1,932
LOANS	10,183	11,048	10,595
INVESTMENTS IN AFFILIATES	9 A 5/2	9	65
PROPERTY AND EQUIPMENT	217 A 5/2	244	246
OTHER ASSETS	735 A 5/2	217	235
DUE FROM AFFILIATES	195	168	287
TOTAL ASSETS	16,983	18,655	23,517
<u>LIABILITIES</u>			
DEPOSITS	13,230 A 4/2	15,406	18,791
DUE TO BANKS	2,677 A 4/3	2,431	3,161
OTHER LIABILITIES	770 A 4/4	441	382
DUE TO AFFILIATES	52 A 4/2	66	109
	16,729	18,344	22,443
CAPITAL LOAN NOTES	462 A 4/2	462	517
TOTAL LIABILITIES	17,191	18,806	22,960
NET (LIABILITIES)/ASSETS	(208)	(151)	557
SHARE CAPITAL	845	845	745
SHARE PREMIUM	434	434	134
LEGAL RESERVES	52	53	52
REVALUATION RESERVE	32	32	30
GENERAL RESERVES	(1,716)	(1,649)	(538)
TOTAL CAPITAL & RESERVES	(353)	(285)	423
MINORITY INTERESTS	145	134	134
	(208)	(151)	557

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ICIC GROUP

COUNTRY	EXTERNAL LIABILITIES			EXTERNAL ASSETS				TOTAL ASSETS \$m
	Deposits \$m	Contingent Liabilities \$m	Other Creditors \$m	TOTAL LIABILITIES \$m	Loans \$m	Due from Banks \$m	Other Assets \$m	
SA								
UK	1,840.6	151.8	760.1	2,752.5	470.7	268.6	82.1	821.4
UAE	1,299.3	179.0	83.2	1,561.5	28.8	95.8	10.0	134.6
LUXEMBOURG	628.9	46.2	82.8	758.0	15.2	21.1	2.3	38.6
JAPAN	324.4	36.9	123.4	484.7	78.6	6.8	0.5	85.7
GERMANY	71.8	13.6	3.7	89.1	4.2	12.9	0.5	17.3
JORDAN	101.8	9.7	2.7	114.2	3.9	56.8	1.1	63.8
YEMEN	94.9	0.4	2.9	98.2	3.1	79.7	3.0	85.8
BAHRAIN	40.1	0.0	43.4	83.5	0.6	2.4	0.8	3.8
USA	(7.8)	13.8	3.7	8.5	0.0	0.0	0.3	0.3
CYPRUS	22.3	1.7	0.1	24.1	0.0	0.5	0.1	0.6
NETHERLANDS	14.0	3.5	(9.7)	7.8	0.4	9.4	0.1	9.9
ITALY	0.0	6.2	2.7	10.9	0.5	1.1	0.3	1.9
DJIBOUTI	0.0	0.0	0.0	0.0	0.0	0.0	0.1	0.1
TOTAL SA	4,430.3	466.6	1,099.1	5,996.0	608.0	554.6	101.2	1,263.8
OVERSEAS								
CAYMAN	208.9	92.2	1,851.4	2,153.5	103.5	20.7	80.4	204.6
PAKISTAN	398.3	100.5	87.4	586.2	53.9	98.5	149.8	302.2
CHINA	(0.1)	81.3	219.7	300.9	3.1	0.6	0.6	4.3
BANGLADESH	162.8	97.6	6.5	266.9	11.3	20.4	25.7	57.4
INDIA	154.8	35.1	52.8	242.7	17.8	28.1	81.9	127.8
OMAN	149.9	20.1	5.2	175.2	16.2	28.2	25.7	70.1
KOREA	36.6	128.2	3.9	168.7	12.4	10.3	0.3	23.0
FRANCE	100.5	9.0	60.5	170.0	0.6	25.6	1.0	27.2
SUDAN	84.8	5.8	14.9	105.3	4.1	37.8	15.1	56.8
PANAMA	82.2	13.5	1.9	97.6	12.4	3.1	0.8	16.3
MONACO	93.7	3.7	1.6	99.0	1.2	0.9	0.2	2.3
TOGO	59.3	0.9	1.6	61.8	3.2	38.8	0.4	42.4
SRI LANKA	37.5	6.8	10.4	54.7	7.5	6.3	0.8	14.4
IVORY COAST	36.5	3.6	2.4	42.5	3.8	11.5	0.4	15.7
BARBADOS	34.1	1.1	5.5	40.7	5.7	4.2	0.3	10.2
GABON	31.6	4.3	1.4	37.3	5.2	(8.1)	0.9	0.0
LIBERIA	25.3	6.3	3.0	34.6	1.4	0.2	6.9	8.5
SENEGAL	23.8	15.7	2.1	41.6	3.7	11.8	1.1	16.6
JAMAICA	0.8	4.5	19.8	25.1	0.0	14.4	0.2	14.6
SEYCHELLES	16.0	2.8	7.4	26.2	3.5	1.4	16.6	21.5
MACAU	20.2	2.6	0.4	23.2	0.7	0.4	0.7	1.8
TURKEY	32.9	15.6	4.1	52.6	0.5	0.7	1.1	2.3
MALDIVES	3.9	0.7	1.0	5.6	0.6	1.6	0.2	2.4
PHILIPPINES	2.6	1.9	0.6	5.3	11.9	3.9	0.0	15.8
PARAGUAY	3.3	0.4	1.1	4.8	0.3	2.0	0.2	2.5
SIERRA LEONE	4.4	0.4	0.3	5.1	0.2	0.1	0.2	0.5
TOTAL OS	1,805.6	854.4	2,347.1	4,807.1	284.7	365.2	411.3	1,061.2
OTHERS								
HOLDINGS	0.0	0.0	478.3	478.3	0.0	0.0	18.6	18.6
INVESTMENTS IN SUBS							50.0	50.0
UNALLOCATED PROV FOR VCO			178.0	178.0	(50.0)			(50.0)
CFC	135.8	4.8	3.5	143.7				
UNRECORDED CREDITORS	600			600.0				
DISPOSAL PROCEEDS							2.0	2.0
LOAN LOSS RESERVE			64.0	64.0				
POOL TOTAL	6,971.5	1,125.6	4,168.0	12,265.1	842.7	919.8	583.1	2,345.6

less:	Preferential creditors	(200)
	Estimated overheads	(200)
	Costs of realisation	(239)
		<u>1708.6</u>

SUMMARY OF BRANCH RISK FENCING

	RISK FENCED	COUNTER- PARTIES	BRANCH CAPITAL SUBORDINATED	INTERCOMPANY SUBORDINATED	ASSETS INTRA- GROUP US\$	LIABILITIES INTRA- GROUP US\$	INTRA- GROUP RECEIVABLE US\$	INTRA- GROUP PAYABLE US\$	EXTERNAL ASSETS AND LIABILITIES US\$	ASSETS TOTAL US\$	CAPITAL AND RESERVES US\$
OVERSEAS BRANCHES RINGFENCED					(A)	(B)	(C)	(D)	(E)	(A)+(E)	(A)-(B)
Banladesh	Y	Y	Y	Y	162	178	12	0	1	168	0
Barbados	Y	Y	Y	Y	36	40	8	1	1	36	0
China	Y	Y	Y	Y	50	214	201	0	17	50	0
Gabon	Y	Y	Y	Y	39	26	6	7	6	39	0
India	Y	Y	Y	Y	220	210	1	4	7	210	0
Ivory coast					34	36	7	0	5	34	0
Jamaica					36	21	0	2	1	36	0
Korea	Y	Y	Y	Y	76	42	4	17	21	42	0
Liberia					20	26	9	1	2	20	0
Macau	Y	Y	Y	Y	16	21	10	0	5	16	0
Maldives					7	6	1	1	1	7	0
Oman	Y	Y	Y	Y	157	161	17	0	12	157	0
Pakistan	Y	Y	Y	Y	532	476	2	64	55	476	0
Panama	Y	Y	Y	Y	140	88	15	66	4	88	0
Paraguay					4	2	0	0	2	4	0
Philippines	Y	Y	Y	Y	78	4	8	81	1	4	0
Senegal	Y	Y	Y	Y	25	29	1	0	7	25	0
Seychelles	Y	Y	Y	Y	26	25	1	7	7	26	0
Sierra Leone					5	5	1	0	1	5	0
Sri Lanka	Y	Y	Y	Y	49	49	6	0	6	49	0
Sudan	Y	Y	Y	Y	122	96	4	26	12	96	0
Togo					54	56	5	0	5	54	0
Turkey	Y	Y	Y	Y	7	10	2	0	1	7	0
SUB-TOTAL					1,962	1,831	321	272	180	1,611	2,284
OVERSEAS BRANCHES NOT RINGFENCED											
Grand Cayman	Y	Y	Y	Y	4,410	2,676	1,910	2,662	1	181	2,671
France	Y	Y	Y	Y	82	206	227	86	16	82	0
Panama	Y	Y	Y	Y	8	46	49	0	11	8	0
SUB-TOTAL					4,500	2,928	2,186	2,750	28	2,967	1,774
SA BRANCHES RINGFENCED											
Bahrain	Y	Y	Y	Y	1,028	85	55	1,001	1	91	940
Japan	Y	Y	Y	Y	198	491	295	101	1	198	0
Jordan	Y	Y	Y	Y	107	108	12	0	12	107	0
Los Angeles	Y	Y	Y	Y	121	11	1	120	0	11	0
Morocco					0	0	1	0	1	0	0
New York	Y	Y	Y	Y	57	121	0	166	1	121	0
UAE	Y	Y	Y	Y	867	1,402	765	144	106	867	0
Yemen	Y	Y	Y	Y	102	102	12	0	11	102	0
SUB-TOTAL					2,550	2,188	1,240	1,512	30	1,078	2,279
SA BRANCHES NOT RINGFENCED											
Luxembourg	Y	Y	Y	Y	839	792	906	492	460	792	0
UK	Y	Y	Y	Y	2,222	2,115	760	112	244	2,222	0
Cyprus	Y	Y	Y	Y	1	22	21	0	0	1	0
Germany	Y	Y	Y	Y	66	102	92	45	12	66	0
Italy					6	4	0	0	2	6	0
The Netherlands	Y	Y	Y	Y	22	16	1	1	5	22	0
SUB-TOTAL					3,160	4,051	1,781	655	515	3,160	4,941
Upper case	confirmed by EIT										
Lower case	alternative verification										
Query	outcome uncertain										
Asterisk	law-enforced rescission										
TOTAL					12,174	10,998	5,528	6,190	514	6,855	17,701

VINYL SUBSTITUTES AND AFFILIATES

CONSOLIDATED (28)

UNCONSOLIDATED

[illegible]

OTHER RELATED ENTITIES

12 Company for Exchanges SAK Korat	BOCI Leasing Co Ltd	Thailand
Bank of the Third World BCC	Canal (1993) Ltd	Thailand
Finance & Securities Ltd	Consolidation Ltd	Thailand
BOCI Enterprise (Thailand) Ltd	BOCI Finance Services (Private) Ltd	USA
	Malaysian Investments Ltd	Malaysian

CB		CB		CB	
Branches in 13 countries totaling 47 offices		BCC CANADA Canada 1980 100% CB		BCC GIBALTAR Gibraltar 1984 100% CB	
<ol style="list-style-type: none"> 1 Luxembourg (1) 2 Bahrain (1) 3 Cyprus (1) 4 Germany (2) 5 Italy (1) 6 Japan (1) 7 Jordan (2) 8 Mauritius (1) 9 Netherlands (1) 10 UAE (8) 11 UK (incl. IOM) (24) 12 USA (1) 13 Yemen (2) 		<p>KEY:</p> <p>Blue = % of Shareholding</p> <p>Red = Activity</p>		<p>MB - MERCHANT BANKING</p> <p>CB - COMMERCIAL BANKING</p> <p>IB - INVESTMENT BANKING</p> <p>FC - FINANCE COMPANY</p> <p>IC - INVESTMENT COMPANY</p>	
Branches in 28 countries totaling 63 offices		BCC CANADA Canada 1980 100% CB		BCC GIBALTAR Gibraltar 1984 100% CB	
<ol style="list-style-type: none"> 1 Grand Cayman (1) 2 Bahamas (1) 3 Bangladesh (3) 4 Barbados (1) 5 China (1) 6 France (3) 7 Gabon (3) 8 India (1) 9 Ivory Coast (2) 10 Jamaica (1) 11 Kenya (7) 12 Korea (1) 13 Liberia (1) 14 Macau (1) 15 Maldives (1) 16 Monaco (1) 17 Oman (12) 18 Pakistan (3) 19 Panama (2) 20 Paraguay (1) 21 Philippines (1) 22 Senegal (1) 23 Seychelles (1) 24 Sierra Leone (2) 25 Sri Lanka (2) 26 Sudan (3) 27 Togo (1) 28 Turkey (3) 		<p>KEY:</p> <p>Blue = % of Shareholding</p> <p>Red = Activity</p>		<p>MB - MERCHANT BANKING</p> <p>CB - COMMERCIAL BANKING</p> <p>IB - INVESTMENT BANKING</p> <p>FC - FINANCE COMPANY</p> <p>IC - INVESTMENT COMPANY</p>	

If I could ask Mr. Ron Liebman, representing the Abu Dhabi Investment Authority and Mr. Ahmed Al Sayegh, if he is here to come forward.

We are going to take a 3 minute recess.

[A brief recess was taken.]

Senator KERRY. Mr. Al Sayegh, can I ask you to proceed with the formalities of the committee and Mr. Liebman, are you going to be testifying at all?

Mr. LIEBMAN. I may. Mr. Chairman, we have a short written statement that Mr. Al Sayegh has to deliver, it is about 10 minutes or less.

Senator KERRY. If I could just ask each of you to identify yourselves. Mr. Sayegh, could you just say who you are and who you represent please.

Mr. SAYEGH. My name is Ahmed Al Sayegh and I am director of the Abu Dhabi National Oil Co. I am here as a representative of the majority shareholders because I am a member of the shareholders' working group.

Senator KERRY. Mr. Liebman.

Mr. LIEBMAN. My name is Ron Liebman. I am with the law firm of Patton, Boggs & Blow, and we are counsel to the majority shareholders.

Senator KERRY. Mr. Al Sayegh, we are very appreciative of your coming. I understand this is somewhat out of the ordinary. We certainly want to thank you for taking the time to come. The committee is anxious to have you shed as much light on this as you can and I think your being here is helpful in that regard.

You mentioned you wanted to make an opening statement? Does Mr. Al Sayegh want to read the opening statement?

Mr. LIEBMAN. Yes, Senator, it is very short. It is less than 10 minutes.

Senator KERRY. Very well. He has traveled a long distance, at least he should have that opportunity. So please proceed.

TESTIMONY OF AHMED AL SAYEGH, DIRECTOR, NATIONAL ABU DHABI OIL CO

Mr. AL SAYEGH. My name is Ahmed Al Sayegh, I am a Director of the Abu Dhabi National Oil Co. I am also a member of the shareholders' working group, an ad hoc committee appointed to advise the majority shareholders of BCCI on matters relating to their investment since the closure of the bank in July of 1991.

As you know, the United Arab Emirates which includes Abu Dhabi is a sovereign country. Please understand that although each of the majority shareholders is a sovereign entity or person, I am not here today as a spokesman on government policy of the UAE or the Emirate of Abu Dhabi.

I am here to answer the subcommittee's questions concerning BCCI and CCAH and have provided the subcommittee a written statement which attempts to answer your areas of interest in detail.

The majority shareholders welcome the opportunity to testify before your subcommittee. By volunteering assistance, they hope to underscore their goodwill and desire to cooperate with all compe-

tent authorities in the United States. The majority shareholders are also deeply committed to the preservation of friendly and constructive relations between the United States and the United Arab Emirates.

Before I answer your questions there are several fundamental points that I wish to make. First, the majority shareholders had no involvement in the frauds perpetuated by BCCI which went on for some 18 years while they were passive minority shareholders.

The investment decisions they made during that time were based upon unqualified auditor's reports supplied by respected accounting firms and the knowledge that the bank was regulated in many countries. They were investors in a bank, not managers of a bank and relied on auditors and regulators to do their jobs.

Second, the majority shareholders are the single biggest victim of the fraud and probably its only intended victim. They have lost billions of dollars, as such they maintain their right to pursue their own investigations and have every intention of bringing those responsible for the frauds to justice.

However, it must be understood that the majority shareholders do not control the prosecutions in the UAE, though they are doing everything in their power to assist in the ongoing investigation. As a federation of seven emirates with a constitutional form of government, we too enjoy a separation of powers which include an independent judicial system responsible for criminal proceedings. This separation of powers is respected and upheld at the highest levels of UAE government.

Third, and most importantly for our purposes here today, the Majority Shareholders have every intention of fully cooperating with competent United States authorities in pursuing their own investigations, subject only to any restrictions placed on them under UAE law and the needs of our domestic investigations. My appearance before this subcommittee is intended to reaffirm their commitment to cooperate.

The Majority Shareholders have a great deal to gain from these cooperative efforts. They would like access to information developed by U.S. authorities that would assist them in supporting prosecution efforts being conducted in the UAE, and in their attempts to recover the billions of dollars that were misappropriated from them by BCCI's former management.

In order to facilitate the reciprocal cooperation program, the Majority Shareholders have initiated discussions with the Department of Justice and the New York District Attorney's Office. They believe these preliminary discussions have proved to be constructive.

The Majority Shareholders recognize, Mr. Chairman, that in the past they have not always been able to respond as quickly as this subcommittee and other investigative bodies would have liked. It is important to put the last 2 years in perspective in order to gain a better understanding of the demands placed upon the Majority Shareholders and to appreciate their efforts to act responsibly and in good faith.

It was only at the time of acquiring control of the bank, a little over 2 years ago, that the Majority Shareholders became aware of irregularities, which soon revealed what is now widely known—that a massive fraud took place undetected for many years. Imme-

diately, an investigation was launched by the Majority Shareholders in an attempt to verify information being provided by managers of the bank.

Over the next several months, they were consumed with efforts to restructure the bank in the hopes of salvaging their investment and protecting the assets of millions of depositors and creditors worldwide. As you know, these efforts were undertaken in close cooperation with the Bank of England.

Soon afterward, from August 1990 through February 1991, events in the gulf demanded the UAE's full attention. During this time, my country devoted its complete resources to support U.N. efforts to free Kuwait.

The crisis in the gulf was followed by the firefighting with which we were confronted following the abrupt closure of BCCI in July of 1991, and the intensive negotiations which ensued with the bank's liquidators to arrive at a contribution agreement. Nothing was more urgent than making sure depositors would receive something from a bank in which they had placed their trust. The Majority Shareholders spent 6 months negotiating this agreement which they and the liquidators believe offers depositors and creditors the best hope for a recovery of monies lost by the closure of the bank.

The other terms of the contribution agreement have been widely reported, so I will not go into great detail here. However, I do want to emphasize two terms which have not been widely reported. First, the Majority Shareholders have agreed to waive certain claims they hold against the bank totally in the billions of dollars. And, second, no one under this agreement is exempted from criminal claims.

Meanwhile, our investigation and that of the UAE prosecutor continue. As you might imagine, due to the complexity and scope of the case, it is taking a tremendous amount of time and effort. It is important to understand that these activities, complex and demanding by any standard when dealing with what may be the most wide-ranging financial crimes ever committed, have been undertaken by a young country of 20 years with a limited pool of human resources.

Despite what I have just described to you, the Majority Shareholders were able to cooperate in significant ways with the U.S. authorities to facilitate an orderly sale of First American Bank, and to enable criminal charges to be filed against BCCI, Mr. Abedi and Mr. Naqvi.

Through access granted U.S. authorities to files, including the so-called Naqvi files, and certain witnesses in Abu Dhabi, BCCI's illegal ownership of First American Bankshares was uncovered. This discovery led to the cease and desist order requiring BCCI to divest its shares in the holding company for First American Bank.

I must note that while BCCI's illegal ownership of CCAH—the holding company for First American—was possible through nominee shareholdings, the Ruling Family of Abu Dhabi and the Abu Dhabi Investment Authority held their own minority share interests in CCAH, independent of BCCI's. These shares in First American were paid for with legitimate sources of funds, and their ownership was disclosed at all times to U.S. regulatory authorities.

To facilitate BCCI's divestiture, the Ruling Family and ADIA volunteered to place their shares in a trust and continued to work closely with the Federal Reserve to bring about the establishment of the trust arrangement approved this week by the shareholders. The Ruling Family has also provided financing to First American totally approximately \$190 million since February of 1991 to ensure the bank's financial stability pending an orderly sale.

It is in this spirit of cooperation, Mr. Chairman, that I appear before you today. The Majority Shareholders are now prepared to turn their energies they have necessarily devoted to other matters to further investigative efforts, and look forward to building upon past cooperation endeavors.

As the principal victim of frauds which were perpetrated continuously over 18 years, the Majority Shareholders have a vital interest in seeing that those responsible for the frauds are prosecuted and brought to justice, and that all steps are taken to avoid the occurrence of similar banking frauds in the future.

As I have stated, my appearance today renews the Majority Shareholders' commitment to cooperate with the investigative efforts of your subcommittee and other competent U.S. authorities to the extent that we are able to do so in a manner consistent with our own vital interests and the law of the United Arab Emirates.

I would now be pleased to answer any questions the subcommittee may have on these subjects.

[The prepared statement of the Majority Shareholders follows:]

PREPARED STATEMENT OF BCCI MAJORITY SHAREHOLDERS

The Abu Dhabi Department of Finance, the Abu Dhabi Investment Authority ("ADIA"), H.H. Sheikh Zayed bin Sultan Al Nahyan, and H.H. Sheikh Khalifa bin Zayed Al Nahyan have since April 1990 been majority shareholders of BCCI Holdings (Luxembourg) S.A. (together with its subsidiary banks, "BCCI"). The Majority Shareholders (as the investors just described may be termed in reference to BCCI) are pleased to accept the invitation to appear before the Subcommittee on Terrorism, Narcotics and International Operations to address certain issues relating to BCCI. The Subcommittee and the American people will understand and appreciate the warm relationship that exists between the Governments of the United States and the United Arab Emirates, including the Emirate of Abu Dhabi.

Each of the Majority Shareholders is a sovereign entity or person. Our representative appears freely and voluntarily for the limited purpose of addressing certain matters of mutual concern to our two countries.

We were invited to testify before the Subcommittee to address the following issues:

- the history of the interests held by the Abu Dhabi Department of Finance, members of the Ruling Family of Abu Dhabi, and ADIA in BCCI, from 1972 to date, including the history of capitalizations by these shareholders of BCCI;
- the history of the interests held by members of the Ruling Family of Abu Dhabi and ADIA in CCAH [Credit and Commerce American Holdings, N.V.], CCAI [Credit and Commerce American Investments, B.V.], and First American, from 1978 to date;
- the history and status of negotiations to facilitate the sale of the First American banks;
- cooperation to date by the BCCI Majority Shareholders with U.S. law enforcement and regulatory investigations;
- the status of BCCI officials currently living in Abu Dhabi;
- the status of BCCI documents currently held in Abu Dhabi;
- the status of the pending U.A.E. proceedings involving the prosecution of crimes pertaining to BCCI;
- any investigative findings made to date by the Majority Shareholders concerning BCCI's fraud;

- any assessment made to date by the Majority Shareholders concerning the handling by Price Waterhouse of BCCI audits.

Following a brief summary of the background of how the Abu Dhabi investors came to be the principal owners of BCCI, these issues are addressed in turn below.

I. Background of Abu Dhabi Interest in BCCI

Abu Dhabi is the largest of seven emirates comprising the United Arab Emirates, a federal union founded in 1971. The United Arab Emirates is governed by a Supreme Council comprising the rulers of the seven emirates. The Supreme Council elects one of its members as President and a second member as Vice President, both for a term of office of 5 years. Since the establishment of the union in 1971, H.H. Sheikh Zayed bin Sultan Al Nahyan has been President of the United Arab Emirates. He has also been the Ruler of the Emirate of Abu Dhabi since 1966.

Of particular significance for some of the issues addressed below, the United Arab Emirates has an independent federal judicial system with three levels of courts, a Ministry of Justice, and a Federal Prosecutor's Office. Judges and Federal Prosecutors are selected for executive approval after review by a Judiciary Council headed by the Minister of Justice. Both by statute and constitutional provision, federal judges enjoy independence. All federal judges must take an oath to serve "without fear or favor" and they may not be discharged without cause. Federal law prohibits person or authority from infringing on the independence of the judiciary. Furthermore, standing judges are forbidden from business and political activity and other activity incompatible with the independence of the judiciary.

The Bank of Credit and Commerce International S.A. was established as a bank in 1972 by Agha Hasan Abedi, with financial support from Bank of America, following the nationalization in the same year of the United Bank in Pakistan, which had been run by Abedi. The initial capital was 50,000 shares, of which 25 percent was held by Bank of America. H.H. Sheikh Zayed took 20 percent of the shares, at a total cost of \$500,000. In 1974, BCCI Holdings (Luxembourg) S.A. was established, and a former senior vice-president of Bank of America joined Abedi on the board. Shortly thereafter, shares of BCCI Holdings (Luxembourg) S.A. were exchanged for those of the Bank of Credit and Commerce International S.A. (which became a principal banking subsidiary), and the Abu Dhabi interest dropped to less than 5 percent of BCCI's outstanding share capital. The Abu Dhabi interest was entirely passive. It was not represented on the BCCI board and was not involved in BCCI management.

In 1981, Abedi persuaded ADIA to purchase a 10 percent stake in BCCI. ADIA is a governmental institution that is responsible for placing a portion of Abu Dhabi's oil revenues in a broad spectrum of investments, in order to ensure a stable economic base of income for future generations of Abu Dhabi citizens regardless of future developments in the oil industry. When ADIA made its investment, Abedi proposed that it should have a representative on the BCCI board of directors. With this one exception, the Ruling Family and ADIA continued to have no role in the management of BCCI.

Throughout the period of their investment, the Ruling Family and ADIA received financial statements, audited by large and reputable accounting firms such as Price Waterhouse and Ernst & Whinney (now Ernst & Young). The statements indicated that BCCI was financially healthy and indeed profitable. BCCI expanded into more than 70 countries, where it was subject to national regulation. BCCI Holdings (Luxembourg) S.A. was subject to oversight by the Luxembourg Monetary Institute. The Bank of Credit and Commerce International S.A., one of two principal subsidiary banks, was headquartered in London. Its branches in England, the largest branch network in the BCCI organization, were subject to supervision by the Bank of England. The Bank of Credit and Commerce International (Overseas) Ltd., the second principal subsidiary bank, was headquartered in Grand Cayman and subject to the supervision of the Caymans Inspector of Banks and Trust Companies. In 1987, a College of Regulators was formed, including the three national regulatory bodies noted above. Given the unqualified audit reports of the accountants, and the extensive supervision by regulators, the Abu Dhabi investors had no reason to suspect that there were financial problems.

The situation changed in the spring of 1990. In April 1990, senior management revealed that BCCI had suffered significant losses and Price Waterhouse for the first time identified certain transactions that had been "either false or deceitful." The Price Waterhouse report was sent to the Bank of England and was discussed at a meeting between the Bank of England, the Luxembourg Monetary Institute, Price Waterhouse, and BCCI management in April 1990. With the full support of the Bank of England, the Ruling Family purchased some 15 million outstanding BCCI

shares, and the Abu Dhabi Department of Finance (which previously had owned no BCCI shares) purchased another 15 million outstanding shares and subscribed for 10 million additional shares issued by BCCI. The share issuance was intended to cover the losses which had been identified and to restore the liquidity of the BCCI subsidiary banks. As a result of these steps, and the outlay of \$1.2 billion, the Abu Dhabi investors now owned 77 percent of the stock of BCCI. Documents reflecting the history of the Abu Dhabi shareholding in BCCI are attached as Annex I.

Upon acquiring a majority interest in BCCI the Majority Shareholders made three critical decisions. First, Swaleh Naqvi, the chief executive officer of BCCI, was relieved of executive power. (Abedi had been inactive since suffering a heart attack in 1988, and Naqvi, his deputy, had assumed responsibility for BCCI.) Second, it was decided to make orderly reductions in the size and geographic scope of BCCI. Third, with the encouragement of the College of Regulators, a decision was made to move the headquarters of BCCI to Abu Dhabi from London, so that the Majority Shareholders could begin to monitor some of the activities of BCCI management.

Implementation of these and other decisions was hindered in the summer of 1990 by threats from Iraq against the Arab Gulf countries, including the United Arab Emirates. The United Arab Emirates is a small nation, with limited human resources, and these threats and the subsequent action to expel Iraq from Kuwait required the full attention of the U.A.E. leadership.

Despite these impediments, the Majority Shareholders proceeded to develop a plan to restructure and recapitalize BCCI to avoid the failure of the banks, which would have entailed losses for millions of depositors and other customers around the world. In connection with these efforts, the Majority Shareholders were prepared to commit further substantial amounts of money to support a restructured organization with banks headquartered in London, Hong Kong, and Abu Dhabi that would have new management. The Bank of England and the Luxembourg Monetary Institute actively encouraged such restructuring in meetings during the summer of 1990, and the Bank of England agreed in principle that as part of the restructuring it would be possible to incorporate an entity to carry on a banking business in England.

In October 1990, Price Waterhouse provided a report to the BCCI board of directors that identified large new problem loans and stated that "previous management may have colluded with * * * major customers to misstate or disguise the underlying purpose of significant transactions." The October 1990 Price Waterhouse report suggested that massive fraud may have been carried out over past years by the management of BCCI. The Majority Shareholders then initiated, again with the support of the Bank of England, an Investigating Committee to determine what had occurred, how it was accomplished, and who was responsible.

As a result of these disclosures, the Majority Shareholders demanded Naqvi's formal resignation. Russell Reynolds, an executive recruiting firm, were retained to find new senior management. Naqvi was retained, but only in order to be available to the Investigating Committee. He was extensively interviewed by Price Waterhouse and Ernst & Young, which were both represented on the Investigating Committee. It was clear to all concerned that Naqvi's assistance would be most valuable to the Investigating Committee in obtaining as quickly as possible an understanding of the fraud then coming to light.

Events subsequent to October 1990 thought to be of particular interest in the United States are addressed in the following sections. Outside the United States, while the work of the Investigating Committee continued, discussions for the restructuring of BCCI were brought to a conclusion in May 1991 when, with the encouragement of the Bank of England and Price Waterhouse and the full knowledge of the College of Regulators, the Majority Shareholders offered to put in place a series of financial measures designed to complete the restructuring. Nevertheless, in July 1991 the Bank of England and other regulators closed BCCI's principal banking operations. This decision caused the financial disaster that has now befallen the depositors and other creditors of BCCI. Since July 1991, control of BCCI has been in the hands of liquidators appointed by courts in the United Kingdom, Luxembourg, the Cayman Islands, and elsewhere.

Following shut-down, the Majority Shareholders immediately investigated whether there was any way in which any parts of BCCI could be saved. When it became clear that this was not possible, the Majority Shareholders entered into a lengthy series of negotiations with the principal BCCI liquidators. These negotiations led to a number of arrangements with the liquidators, which will provide a fund of some \$2 billion for the depositors and other creditors of the BCCI banks. While the arrangements have yet to be approved by courts in the United Kingdom, Luxembourg, and Grand Cayman, it has become possible in recent weeks for the Majority Share-

holders to focus on the renewal of cooperation with U.S. authorities to enable them to complete their investigations.

The Majority Shareholders are by far the greatest victims of the frauds. The losses they have suffered total in excess of \$6 billion.

II. Cooperation by the Majority Shareholders with U.S. Law Enforcement and Regulatory Investigations

Among the non-performing BCCI assets identified in the October 1990 Price Waterhouse report were a number of loans secured by pledged shares of the voting stock of Credit and Commerce American Holdings, N.V. ("CCAH"), the parent holding company of First American Bankshares, Inc. ("FAB") and its subsidiary banks. Once it became clear that there were potential violations of U.S. banking law, the Majority Shareholders recognized that the previous approach taken by BCCI management with regard to BCCI's legal problems in the United States was no longer appropriate. In connection with an assessment of ongoing U.S. criminal, regulatory, and congressional investigations involving BCCI, it was decided in late 1990 that BCCI would terminate operations in the United States and would cooperate with U.S. authorities in resolving outstanding regulatory problems resulting from the activities carried out previously by Abedi, Naqvi, and their associates.

In November 1990, the Deputy Associate Director of the Division of Banking Supervision and Regulation of the Federal Reserve Board ("the Board") requested a copy of the October 1990 Price Waterhouse report from BCCI. At the insistence of the Majority Shareholders, on December 3, 1990, Zafar Iqbal, the acting chief executive officer of BCCI, met with the Board official in London and allowed him to read the Price Waterhouse report. The report showed outstanding loans of \$1,332 million secured by CCAH shares.

The General Counsel of the Board and other senior Board staff met with BCCI's U.S. legal counsel on December 21, 1990, and notified them that the information in the October Price Waterhouse report and from other sources raised a substantial question as to whether BCCI may have acquired control of CCAH (and thus indirectly of the First American subsidiary banks) in violation of the Bank Holding Company Act. On December 26, 1990, the General Counsel of the Board wrote BCCI counsel requesting information pertaining to loans from BCCI to the shareholders of CCAH. On January 2, 1991, BCCI counsel provided to the Board summary information showing that there were outstanding non-performing loans from BCCI to shareholders of record of CCAH who owned some 60 percent of the CCAH stock.

Two days later, on January 4, 1991, the Board issued formal Orders of Investigation of BCCI and CCAH. Pursuant to these Orders, Board staff began obtaining documents from various First American banks and BCCI offices in the United States.

In spite of its best efforts, however, it was clear that the Board would not be able to obtain written evidence of the violations without the cooperation of BCCI. Virtually all of the documentation concerning the loans made by BCCI to the CCAH shareholders was located outside the United States. Nevertheless, the Majority Shareholders determined that BCCI should provide all possible assistance to the Board. Accordingly, at the request of the Board's General Counsel, BCCI's counsel travelled to Abu Dhabi on the eve of the liberation of Kuwait in order to review documents relating to CCAH. These documents were included among some 6,000 files that previously had been maintained in the BCCI London head office and at the home of Mr. Naqvi, and which came to be known as the "Naqvi files." This review revealed a variety of secret arrangements that had been made between BCCI or its affiliated companies and the CCAH shareholders who were loan customers of BCCI. The arrangements typically included loans to the customers for the purchase of shares of CCAH with side agreements providing that the customer would not be required to repay the loans. BCCI was given authority to sell the shares and retain any profits. In return, the customer received indemnities and fees for participating in these transactions. Similar arrangements relating to the National Bank of Georgia and Independence Bank were subsequently located.

In mid-January 1991, the General Counsel of the Board was given a general description of these documents, and more detailed descriptions were provided in subsequent meetings. It was the Board's view, as subsequently stated in a release accompanying its notice of initiation of enforcement proceedings against BCCI, that these arrangements violated express commitments in the application made by CCAH to the Board to become a bank holding company. That application had stated that BCCI would have no ownership interest in CCAH, that BCCI was not funding the acquisition of shares of CCAH, and that none of the CCAH shareholders held his interest as an unidentified agent for BCCI. The documents showed, however, that

BCCI had funded the acquisition of CCAH shares and was the actual owner of at least 25 percent of the CCAH shares at the time CCAH acquired First American in 1982.

Federal Reserve investigative officials requested the assistance of BCCI counsel in interviewing Mr. Imran Imam, a BCCI employee who formerly had worked in Mr. Naqvi's office in London. Mr. Imam was located in London and not subject to subpoena. With the assistance of the Majority Shareholders, however, arrangements were made for an official from the Federal Reserve Bank of New York and an investigative officer from the Board to interview Mr. Imam in London on February 14 and 15, 1991. We understand that Mr. Imam has subsequently provided substantial assistance to other U.S. investigative authorities.

The information provided by Mr. Imam increased the desire of federal investigative officials to interview Mr. Naqvi, who was at the time residing in Abu Dhabi, and to review his files in Abu Dhabi relevant to their investigation. With the Majority Shareholders' assistance, arrangements were made for a team of Federal Reserve investigative staff to visit Abu Dhabi from March 16 to 22, 1991. As the Federal Reserve team was en route, Mr. Naqvi demanded that he be provided a U.S. lawyer before meeting with them. A U.S. lawyer resident in Dubai was located and introduced to Mr. Naqvi. Over the course of the week, the lawyer interviewed Mr. Naqvi extensively, but indicated that he was unable to become sufficiently familiar with the case in that time to permit Mr. Naqvi to be interviewed by the Federal Reserve officials. Accordingly, a substantive discussion between them and Mr. Naqvi was prevented at his lawyer's insistence.

Federal Reserve staff did conduct interviews of five BCCI employees in Abu Dhabi. In addition, they were given access to all of the so-called Naqvi files then identifiable as pertaining to CCAH, the National Bank of Georgia, and Independence Bank. Review of these documents occupied most of the Federal Reserve investigators' time over the 6-day period. As part of their review, the Federal Reserve officials asked and were permitted to copy documents of particular interest. A large box was filled with approximately 10,000 documents and sealed at their request. It was agreed that these documents would be kept at the offices of Allen & Overy, BCCI's U.K. lawyers, to allow the Federal Reserve ready access while it continued its investigation and to provide time to determine how the documents might be provided to Board officials without violating applicable bank secrecy laws.

Because the documents were arguably subject to the bank secrecy laws of at least fourteen different jurisdictions, and because some of these laws had criminal as well as civil penalties, the assessment of the bank secrecy issues was quite difficult and time-consuming. To complicate matters, it was learned that one of the BCCI customers, Dr. Ghaith Pharaon, had obtained an injunction in the United Kingdom preventing BCCI from releasing documents relating to his accounts. Pharaon applied to the U.K. High Court to prevent any disclosure of documents relating to him or his affiliated companies or their business activities. On April 26, 1991, the Bank of England issued a notice under Section 39 of the Banking Act 1987 requiring production of most of the documents at issue. Subsequently, two other BCCI customers, Sheikh Kamal Adham and his associate Sayed Jawhary, obtained injunctions similar to Pharaon's covering their documents.

On May 10, 1991, the U.K. High Court ruled that the Bank of England notice overrode the injunctions and required the documents to be delivered to the Bank of England. These documents, which we understand were subsequently provided to the Board and to U.S. law enforcement authorities, served as the basis for the Board's enforcement actions and the criminal charges brought against BCCI and certain of its customers, as well as Abedi and Naqvi, by the U.S. Attorney for the District of Columbia and the New York District Attorney. These charges culminated in a plea agreement filed in the U.S. District Court in Washington, D.C. in December 1991 (the "Plea Agreement"), in which BCCI admitted to owning approximately 60 percent of the shares of CCAH.

The bank secrecy laws of some of the jurisdictions at issue provide no exception for review by regulatory or law enforcement officials. At the Majority Shareholders' insistence, BCCI sought and was able to obtain formal or informal waivers of those laws in some jurisdictions. For the most part, however, BCCI, which at that time was operating in some 72 countries, faced a significant risk of lawsuits from its customers alleging violation of these laws. Yet, there has been very little recognition, either officially or in the U.S. media, of the prominent role played by the Majority Shareholders in providing the information that served as the basis for the BCCI enforcement actions and prosecutions.

III. History and Status of Negotiations to Facilitate the Sale of the First American Banks

The Ruling Family of Abu Dhabi has a substantial, direct shareholding in CCAH that is entirely legitimate and wholly separate from BCCI's shareholding in CCAH. H.H. Sheikh Zayed owns 12 percent and H.H. Sheikh Khalifa owns 10 percent of the voting shares of CCAH. ADIA owns 6 percent of the CCAH stock. These investments have always been of a passive nature, purely for investment purposes.

ADIA was a purchaser in the initial March 1982 tender offer for CCAH. H.H. Sheikh Khalifa purchased his shares shortly thereafter. H.H. Sheikh Zayed acquired his shareholding in December 1983. These holdings have remained stable since that time, although the relative percentages have fluctuated as a result of several rights offerings over the years. The summary of the history of the CCAH shareholding from 1982 to date included in the Federal Reserve Board's July 29, 1991 Notice of Charges against BCCI and other parties is attached as Annex II. The Board's allegations concerning the formation of CCAH and its ownership from 1978 to 1982 (before it became a registered bank holding company) can be found in the Notice of Charges. We believe that the Notice of Charges was developed largely with information that the Majority Shareholders had instructed BCCI to make available to the Board.

The actions described below have all been taken by and on behalf of the Department of Private Affairs of H.H. Sheikh Zayed (the "Private Department") which manages certain investments of the Ruling Family. BCCI, which since July 1991 has been separately represented by its liquidators and their counsel, has acted independently in these matters.

A. Provision of Capital.—The downturn in the economy, the troubled condition of the commercial real estate market in the greater Washington, D.C. area, and the adverse publicity surrounding the ownership of CCAH shares by BCCI all created a difficult and potentially damaging situation for the First American banks. Even though their shareholdings amount to only 22 percent of CCAH, the Abu Dhabi Ruling Family decided in 1991 to provide financial support to First American in the absence of viable alternative sources of financing. Accordingly, on February 14, 1991, the Private Department provided \$48 million of a \$51 million bridge loan to CCAH and First American Corporation ("FAC"), the immediate parent of FAB. Following discussions in London between the Chairman of the Private Department, the Director of the Board's Division of Banking Supervision and Regulation, and the Board's General Counsel, the Private Department on June 27, 1991 extended an additional \$39 million loan to FAC. At the same time, the Private Department provided further capital assistance by purchasing \$82 million of outstanding FAB debt and waiving certain loan defaults that were preventing the issuance of financial statements.

More recently, the Private Department purchased a term loan to FAC in the principal amount of \$9,350,000 from Banque Arabe et Internationale d'Investissement ("BAII"). First American management requested that the Private Department purchase the loan and agree to a waiver of any defaults, including default caused by non-payment. Despite the unfavorable terms, the Private Department agreed to purchase the loan and to defer payment and waive any default resulting from non-payment until January 1, 1993. The Private Department has provided similar extensions and waivers with regard to the other debt owed to it by CCAH, FAC, and FAB, all in order to provide visible and meaningful direct financial assistance to First American.

As a result of the financing described above, in addition to loans made in December 1990, the Private Department and ADIA are now owed approximately \$190 million in principal by First American. This \$190 million provided a capital cushion for the subsidiary banks during the difficult period caused by the events of the past 2 years.

B. Management Changes.—Largely as a result of the publicity resulting from the shut-down of BCCI in early July 1991 and congressional hearings into BCCI's secret ownership of CCAH shares later that month, First American suffered a significant outflow of deposits in early August 1991. The situation was of sufficient concern to the outside directors of First American that they sought the resignation of Clark Clifford and Robert Altman from their management and director positions with FAB and the other companies. To assist in resolving this matter, the Private Department agreed, on behalf of H.H. Sheikh Zayed, to call a special meeting of the shareholders of CCAH to consider changes in the First American directors and management. Shortly thereafter, Mr. Clifford and Mr. Altman agreed to resign their positions. Nicholas Katzenbach, a former Attorney General and Deputy Secretary of

State, agreed to accept the position of chairman of the board of FAB. His willingness to serve on the board of directors was conditioned, however, upon (i) indemnification for himself and the other directors, and (ii) appointment of a trustee to hold the disputed shares.

Because of the Private Department's concern that First American have independent management at this period of crisis, it agreed to provide indemnities to Mr. Katzenbach and the other directors against claims arising out of their service as directors of FAC and FAB. By providing these indemnities, the Private Department undertook a substantial contingent liability, in addition to the financing described above, to ensure that First American would have effective responsible management selected not in Abu Dhabi but by the outside directors of FAB working with Board staff.

C. Trust Arrangement.—On March 4, 1991, BCCI, the Board, and the Superintendent of Banks of the State of New York entered into a consent cease-and-desist order whereby BCCI agreed to divest any shares of CCAH it might be deemed to control, to refrain from engaging in transactions with the First American banks except as authorized by the Board, to submit a plan for closure of the BCCI agencies in Los Angeles and New York, and to continue to cooperate in the Board's investigation of the possible acquisition of CCAH shares by BCCI. The consent order provided that the divestiture plan "should include arrangements for the custody and control of such shares of CCAH pending the completion of the divestiture required by this order."

As part of its divestiture plan, BCCI submitted to the Board a draft trust agreement providing for the creation of a trust that would hold the shares of CCAH pledged to BCCI. The divestiture plan and the draft trust agreement were under consideration by Board staff when BCCI was shut down on July 5, 1991.

The closure of BCCI's principal banking operations by the Bank of England and the other regulatory authorities, and the appointment of provisional liquidators to conduct the affairs of BCCI, made implementation of a trust at the CCAH level difficult or impossible as a practical matter. The BCCI liquidators refused to take any action with regard to the pledged shares for fear of waiving certain rights they believed they had under refinancing documents that the Majority Shareholders had signed in May 1991 as part of the planned restructuring of BCCI. There were also other technical legal questions.

In any event, Board staff in early August 1991 requested the assistance of the Private Department in creating a trust that would hold 100 percent of the shares of one of the intermediate First American holding companies. Counsel for the Private Department undertook to revise the draft trust agreement previously submitted to the Board by BCCI to reflect this changed approach. It was determined that a lower-level trust (*i.e.*, one involving the shares of FAC or FAB rather than CCAH) would be much more complex as a legal matter and would require the affirmative approval of the CCAH shareholders. Nevertheless, as part of its program of cooperation, the Private Department indicated a willingness to call such a meeting and to recommend the trust that would be proposed. Significantly, the Private Department indicated that H.H. Sheikh Zayed and H.H. Sheikh Khalifa would be willing to place their legitimate direct interests in the trust, although there was no legal obligation to do so. ADIA made a similar undertaking.

While the trust agreement was being redrafted, efforts were made to identify an appropriate trustee. Private Department counsel requested suggestions from Board staff, First American management, and others. Efforts were made to find an institutional trustee such as a trust company, but none of the trust companies approached was willing to accept the appointment. The best candidate identified was William Isaac, a former Chairman of the Federal Deposit Insurance Corporation and currently Chairman of the Secura Group, a prominent Washington, D.C. investment banking concern that specializes in commercial bank mergers and acquisitions. Neither Board staff nor any of the other parties expressed any objection to the choice of Mr. Isaac.

In late 1991, however, after numerous revisions to the draft trust agreement to reflect concerns expressed by Board staff, First American management, the BCCI liquidators, and the prospective trustee, First American management indicated a concern about Mr. Isaac's role and suggested that a trust was no longer necessary. Moreover, the Wall Street Journal, in an editorial of November 25, 1991, criticized the choice of Mr. Isaac because his name had been offered by representatives of Abu Dhabi. Subsequently, on January 16, 1992, the Wall Street Journal published an editorial stating that "the delay in the sale and appointment of [a] trustee is a tribute to the continuing influence of Sheik Zayed. * * * He and his representatives seem

to feel entitled to a say in how to dispose of the interest the bank illegally acquired."

All that the Ruling Family received for its efforts to act responsibly to assist the Board in establishing a lower-level trust was public criticism based on a misunderstanding of the role played by the Private Department. Divestiture of BCCI's CCAH holding is the BCCI liquidators' responsibility. Representatives of the Private Department have been involved in this process only because Sheikh Zayed and his family separately and legitimately own a minority interest in CCAH. For taking steps to help facilitate the sale of First American, Abu Dhabi was harshly criticized in the U.S. press. Accordingly, it seemed appropriate to step back from the discussions and leave resolution of the matter to the Board, the liquidators, and First American management.

Unfortunately, this approach did not prove satisfactory either. After meeting with Harry Albright, a prospective trustee identified by Board staff, representatives of the Private Department indicated that they had no objection to his appointment. Board staff then undertook to develop a trust plan that would be presented to the Private Department along with the other CCAH shareholders, at a shareholders meeting to be called for this purpose. Controversy arose over this plan as well, however. On April 17, 1992, a Wall Street Journal editorial stated that "current management [of First American] is resisting efforts to appoint an independent trustee to exercise custody of the CCAH shares." Even though Abu Dhabi had not objected to the trust or the designated trustee, the editorial misrepresented the facts and concluded that "Mr. Albright's appointment is now blocked because the sheik won't consent to it."

The Subcommittee can perhaps appreciate the exasperation that these misrepresentations of efforts to assist in the process has caused in Abu Dhabi. Nevertheless, the Private Department wishes to make clear once again that it has no objection to the implementation of the lower-level trust or the appointment of Mr. Albright as trustee. Its representatives have assisted Board staff in various ways in taking the steps required under foreign law to establish the trust. Indeed, both the Ruling Family and ADIA voted earlier this week to approve the establishment of the trust at a CCAH shareholders' meeting held for this purpose.

D. Sale.—In addition to its efforts to help establish a trust, which may be necessary to provide clear title, the Private Department has also sought to advance a sale of First American in other ways. In January, the Private Department hired Smith, Barney & Co. to explore ways to expedite the sale process. This effort, which is being carried out in coordination with FAB management and FAB's investment advisors, Dillon, Read & Co., is ongoing.

IV. Status of BCCI Officials Currently Detained in Abu Dhabi, and of U.A.E. Prosecution of Crimes Pertaining to BCCI

As mentioned above, prior to the closure of BCCI its senior management had been transferred to Abu Dhabi to be subject to some supervision of their activities by the Majority Shareholders. Two months after the BCCI shutdown, on September 8, 1991, recognizing that these individuals would be able to flee the United Arab Emirates within hours of learning of any planned prosecution, the Ministry of the Interior acted under the authority of Federal Law No. 6/1973, Concerning Immigration and Residence, to order the summary arrest of the BCCI officials suspected of being involved in the irregularities and fraudulent activities. This law allows the Ministry of the Interior to detain aliens for up to 14 days in matters of great concern to public order and public security.

U.A.E. law allows individuals to obtain civil damages for harm caused by the illegal activities of others through application to the relevant criminal court. The pursuit of civil damages through criminal tribunals is codified in U.A.E. Federal Laws No. 10/1973, Concerning the Federal Supreme Court, Part 4 and No. 3/1983, Concerning the Federal Judiciary, Part 4. As civil claimants and by far the greatest victims of BCCI, the Majority Shareholders filed a complaint and supporting documents with the U.A.E. Federal Prosecutor on September 21, 1991. The matter is now referred to as Criminal Complaint No. 4119/91.

The BCCI matter is unique in U.A.E. judicial history in terms of its complexity. Because of the importance of the case, the Federal Prosecutor has ordered that all proceedings be held *in camera* and that all supporting documentation remain strictly confidential. Translations of the U.A.E. laws that govern the prosecution of this matter are attached as Annex III. A brief description of the Federal Prosecutor's activities to date follows.

As a result of the Majority Shareholders' complaint and other evidence accumulated by the Federal Prosecutor, eighteen BCCI officials were preliminarily charged for a variety of apparently fraudulent acts described in the complaint and supporting documents. They are now subject to detention pending the issuance of final criminal charges after a thorough prosecutorial investigation. The Majority Shareholders believe that the final charges will include various counts of larceny, fraud, forgery, and violations of other U.A.E. laws, including the U.A.E. Penal Code.

The Federal Prosecutor acted under the authority of Federal Law No. 10/1973, Article 48. Under this law persons preliminarily charged pursuant to a criminal investigation may be held for 21 days without being finally charged. After 21 days, the prosecutor must apply to the relevant court for an extension of time if the investigation is incomplete. The court may allow further detention for up to 30 days after reviewing the case file and hearing the defendant. The 30-day period can be extended by further court orders, and such extensions have been granted in this case.

After the complaint was filed, a supplementary report and documentary evidence prepared by a major international accounting firm on behalf of the Majority Shareholders were presented to the Federal Prosecutor on October 19, 1991. Late in October, the Prosecutor cross-examined the auditors concerning the content of their report. Another round of interviews with the auditors occurred from late November through December 4, 1991. The Prosecutor also has conducted its own investigations to verify, authenticate, and supplement the Majority Shareholders' submissions.

By mid-December the Federal Prosecutor's office reportedly had collected a great wealth of evidence. Because this evidence included countless banking, accounting, and transfer records, the Federal Prosecutor on December 12, 1991 appointed an independent international accounting firm (not the same one that had prepared the report for the Majority Shareholders) to assess the evidence thus far collected and any further evidence presented. As is usual for a civil complainant in a criminal action, the Majority Shareholders were ordered to bear the expense of this extraordinary review. In an effort to bring the matter to a close, the Federal Prosecutor had initially ordered that the independent auditors' findings be presented within 3 months. The auditors asked for and were granted an extension, however, when they realized the infeasibility of completing such a large task within that time.

The auditors' investigation has continued to the present. In February and again in April they were presented with further documentary evidence by the Majority Shareholders as plaintiffs. With hundreds of thousands of documents to review, many individuals to examine, and many translations to be made, it has not yet been possible to present the results of a final investigation to the court.

The Majority Shareholders understand and share the Subcommittee's desire to close this matter quickly, but the investigation is not under our control. Indeed, we eagerly await the conclusion of the Federal Prosecutor's investigation.

Since July 1991, the Majority Shareholders have been working toward an arrangement with the BCCI liquidators that would provide funds for the depositors and creditors victimized by BCCI. They have only recently been able to focus on the renewal of cooperation efforts and the development of a mutual cooperation program with U.S. authorities. In the past few weeks, the Majority Shareholders have authorized counsel to initiate discussions with the Department of Justice, the New York District Attorney, and the Federal Reserve Board concerning reciprocal cooperation in the investigations of BCCI under way in both countries.

V. Status of BCCI Documents Currently in Abu Dhabi

BCCI bank records are under the protective custody of the U.A.E. federal civil court. The court issued an attachment order on July 18, 1991 pursuant to an application for receivership. At that time a receiver was appointed by the court to marshal and appraise the value of the assets of BCCI in the United Arab Emirates and to safeguard relevant documents.

In order to investigate and gather evidence related to the criminal action, the Majority Shareholders required access to certain important bank files relevant to the matter. The civil court granted access to the Majority Shareholders because, under U.A.E. Federal Laws No. 10/1973, Articles 54 and 55, and No. 3/1983, Article 55, the party initiating a criminal proceeding as a civil claimant bears significant responsibility for gathering evidence upon which the prosecution can proceed. As described above, the Federal Prosecutor has ordered that the documents otherwise remain confidential. Of course, any documents that form the basis of the final charges against the detainees will necessarily become available to the defendants and their lawyers when the matter is put before the court.

Federal Reserve investigative officials spent 6 days in Abu Dhabi in March 1991 reviewing the so-called Naqvi files relating to BCCI's ownership of U.S. banking institutions, and some 10,000 of these documents were turned over to U.S. authorities before BCCI was shut down. Thus, the documents presumably most relevant to U.S. authorities have already been provided to them. The discussions described above concerning reciprocal cooperation in the investigations of BCCI under way in both the United States and the United Arab Emirates will address mutual access to documents, subject to approval by the U.A.E. federal civil court and the U.S. authorities.

VI. Any Investigative Findings Made to Date by the Majority Shareholders Concerning BCCI's Frauds

Prior to shutdown, the investigation of the frauds was carried out by the Investigating Committee. That Committee was originally set up under the auspices of the Majority Shareholders. However, bank secrecy considerations required that the Committee be appointed by BCCI. The makeup of the Committee did not change, however. Both Price Waterhouse and Ernst & Young were retained to staff the Investigating Committee, together with Allen & Overy, a leading U.K. law firm, and representatives of ADIA and the Abu Dhabi Department of Finance.

The mandate of the Investigating Committee was to get to the bottom of the problems and then direct work necessary to recover BCCI assets wherever possible. The loan recovery work was just beginning when the BCCI banks were shut down. The work of the Investigating Committee was never completed due to the shut-down. The Majority Shareholders continue to assist the liquidators, who are actively investigating the losses with a view to recovering assets.

As discussed above, the criminal investigation currently being carried out by the U.A.E. Federal Prosecutor is not under the control of the Majority Shareholders.

VII. Any Assessment Made to Date by the Majority Shareholders Concerning the Handling by Price Waterhouse of BCCI Audits

Finally, the Subcommittee requested that we provide an assessment of the way Price Waterhouse carried out the audits of BCCI. In brief, the Majority Shareholders are of the view that Price Waterhouse was negligent. Because the conduct of the auditors is now subject to litigation, we are constrained in the information that can be made available.

Price Waterhouse were the auditors of BCCI and both of its principal bank subsidiaries from 1987 until shut-down. Prior to that, Price Waterhouse were the auditors of one of the two principal subsidiaries, BCCI (Overseas) Ltd. ("Overseas"). They had audited that subsidiary since it was first incorporated in 1972. Much of the bad lending, which is now known to be irrecoverable, was booked through Overseas. The most notable examples were loans to nominees to purchase CCAH shares on behalf of BCCI and loans to the Gulf Shipping Group and its owners, the Gokals. According to the work of the auditors at the time, of the major BCCI Group credit exposures at September 30, 1986, totalling \$2.55 billion, approximately 60 percent related to loans made by Overseas.

Until 1987, both Price Waterhouse, as auditors of Overseas (where most of the irregularities are believed to have taken place), and Ernst & Whinney, as BCCI Group auditors, were at fault for not having discovered the true position. When the auditors did see problems, they failed to understand what those problems signified. The auditors ignored the flashing amber lights.

Despite having been appointed auditors of the entire BCCI Group, it took Price Waterhouse a further 3 years before they began to appreciate the gravity of the financial situation of the banks. It was not until the Investigating Committee was formed that a clear picture of the scale of the frauds and losses emerged.

Price Waterhouse should accept responsibility for their failure to uncover the true position year after year. The Abu Dhabi investors relied on the unqualified audit reports, showing BCCI to be sound and profitable. If not to monitor the actions of management, and give a true and fair report on the financial position of a company to its shareholders, what purpose do auditors have?

Once the settlement arrangements negotiated between the Majority Shareholders and the BCCI liquidators are completed, claims already commenced in London in March 1992 by the liquidators against both Price Waterhouse and Ernst & Whinney for negligence will be assigned to the Majority Shareholders. Since the civil claims are already in progress, it is not appropriate for the Majority Shareholders to elaborate further at this stage on the failings of the auditors. There is no question, however, but that the Majority Shareholders are firmly of the view that the auditors were negligent for many years in failing to discover the true situation.

In this regard, the Majority Shareholders welcome the inquiry by the Joint Disciplinary Scheme, a U.K. accounting oversight and disciplinary body, into the role of Price Waterhouse and Ernst & Young in connection with BCCI. The report from Accounting Age attached as Annex IV notes that one Price Waterhouse partner performed four major roles at BCCI—audit engagement partner, adviser to the Investigating Committee, adviser to BCCI on the restructuring plan, and reporting accountant on BCCI to the Bank of England and the College of Regulators. When it is considered that the same partner was advising the Majority Shareholders on the restructuring plan as well, the conflict of interest should be obvious.

VIII. Conclusion

The Majority Shareholders appreciate the role this Subcommittee has played in bringing to light and pursuing first illicit money laundering by BCCI and subsequently its illegal ownership of U.S. banks. As the principal and intended victim of the frauds which were perpetrated over the past 18 years by BCCI, the Majority Shareholders have a vital interest in seeing that those responsible for these frauds are prosecuted and brought to justice, and that all possible measures are taken to avoid the occurrence of similar banking frauds in the future. Our appearance here today should signal to you our desire to cooperate with the investigative efforts of your Subcommittee and other competent U.S. authorities, to the extent that we are able to do so in a manner consistent with our own vital interests and the law of the United Arab Emirates.

Senator KERRY. Thank you very much, Mr. Al Sayegh. Let me just say at the outset that we certainly understand and appreciate the friendly relations which we have had between our countries. And obviously, in the recent days, there has been great cooperative effort with respect to the efforts in the Gulf. And so we are well aware that you come here in that spirit of cooperation and friendliness.

The questions that we have, I think, are fairly obvious. I do not know if you had a chance to follow the course of some of the questioning today, but the most obvious questions are the ones that I would really like to begin with. You have suggested in your statement today that there really should be no problem in our having access to individuals or to documents. And I would like to just pursue that a little bit.

Can we understand now that Mr. Naqvi and Mr. Iqbal and others will be made available to both members of the committee staff and Justice Department personnel?

Mr. AL SAYEGH. Yes, Senator. We are in discussions now, ongoing discussions, with the Department of Justice on terms for an agreement to provide access to both individuals and documents. And we hope that such discussions conclude soon and enable both of our countries to mutually use the evidence and documents accumulated on both ends for our benefit and those investigations that are being carried on here in the United States.

Senator KERRY. As I had asked, will it be possible for the staff of our committee to also be able to have such a meeting and be able to interview them?

Mr. AL SAYEGH. Certainly, Senator. We are hopeful that such discussions include all U.S. bodies with an interest and subject to conclusion of the discussions.

Senator KERRY. Who are these discussions between right now?

Mr. AL SAYEGH. Right now they are between ourselves and the Department of Justice, and the district attorney of New York.

Senator KERRY. Do you have a sense of when those agreements will reach conclusion?

Mr. AL SAYEGH. They started a few weeks ago, Senator. I am certain we could wrap them up quickly.

Senator KERRY. Well, obviously we hope so, and we will be in touch with both the Justice Department and the district attorney to make certain that the interests of the committee are also protected. But that will be very helpful, obviously, to move forward in that regard.

With respect to the documents, I understand in prior meetings with your counsel, that there was some concern about just the availability of people to be able to process some of these documents. Obviously, time is of the essence. I know that we would be delighted to try to work out a way of being helpful with respect to that.

Mr. AL SAYEGH. Well, thank you for your offer, Senator. We are in the process of cataloging these documents and in the process of making them available in a manner that would enable investigators to come to grips with them quickly. This process has started and we have devoted to it professional resources which we believe is adequate.

Senator KERRY. On page 4 of your original testimony as submitted, it says, in 1981, Abedi persuaded ADIA, which is the entity created in Abu Dhabi by Sheikh Zayed to purchase a 10 percent stake in BCCI. I was curious if you could share with us a little bit what Abedi's role—Mr. Agha Hasan Abedi of Pakistan, who is the founder of BCCI—what his role was in the financial affairs of Abu Dhabi and the United Arab Emirates in 1981 at this time.

Mr. AL SAYEGH. When Mr. Abedi was a respected banker and founder of BCCI, his role, therefore, was limited to his bank. However, he enjoyed connections worldwide and he knew personalities in many countries. And so his role in this case, I guess, was limited to inducing potential investors in making commitments to his bank, whether buying shares or placing deposits.

Senator KERRY. So he had influence at that time as a banker, a financial advisor?

Mr. AL SAYEGH. He was not a financial advisor. He was the founder and chief executive of BCCI, and that is the premise under which he was in touch with all the potential investors in the country.

Senator KERRY. Now, ADIA—this entity was created in order to invest a lot of the oil revenues, correct?

Mr. AL SAYEGH. ADIA was set up in the 1970's by the government to invest for future generations the surpluses of Abu Dhabi government's income, and has done many investments worldwide to achieve its purpose.

Senator KERRY. The head of ADIA at that time was Abdullah Darwaish?

Mr. AL SAYEGH. No, Senator. Abdullah Darwaish at the time was chairman of the private department of His Highness, which is a department set up to handle the private investments of Their Highness.

Senator KERRY. And what was Abdullah Darwaish's role was what within that?

Mr. AL SAYEGH. Abdullah Darwaish was the chairman. He looked after all—

Senator KERRY. The chairman of ADIA.

Mr. AL SAYEGH. Not the ADIA, Senator, chairman of the private department. ADIA is a separate entity with directors and a board and a managing director who is not Mr. Darwaish.

Senator KERRY. Now, was Mr. Abedi one of Darwaish's supervisors?

Mr. AL SAYEGH. No, Senator. Mr. Abedi was not a supervisor of Mr. Darwaish. Mr. Darwaish reported to Their Highnesses.

Senator KERRY. Do you have any idea how Mr. Abedi or why Mr. Abedi would have advised the sheikh to have Mr. Darwaish arrested?

Mr. AL SAYEGH. I'm not aware of such an advice. Mr. Darwaish was tried for, I believe, some misappropriation of funds in the private department, but I am not aware of why and when Mr. Abedi gave any advice on this.

Senator KERRY. You have heard of ICIC?

Mr. AL SAYEGH. Yes, Senator.

Senator KERRY. ICIC was set up as an investment vehicle for the Royal Family, is that correct?

Mr. AL SAYEGH. That is not correct, Senator. ICIC was set up to hold the shares of the founders, management founders of BCCI. So it's Abedi's and other's shares were initially held by this trust.

Senator KERRY. Did the royal family, at some point, invest in ICIC?

Mr. AL SAYEGH. No. I'm not certain who anyone could invest in ICIC. ICIC, as I said, was a vehicle for the founders.

Senator KERRY. Only for the founders?

Mr. AL SAYEGH. Only for the founders.

Senator KERRY. Do you know what the relationship of ICIC holdings, ICIC overseas, ICIC investments were in relation to ADIA?

Mr. AL SAYEGH. There is no relation between ICIC and ADIA as such. ADIA has had dealings with ICIC separate from a relationship and shares or anything like that. But they were not related entities. They are separate entities.

Senator KERRY. Was there some investment that flowed from ADIA into either of those, any of those ICIC holdings?

Mr. AL SAYEGH. I'm not aware of ADIA's investments. I'm not aware of any investments made into ICIC by ADIA, if that is the question you're asking. But ADIA has had dealings with ICIC. I believe ADIA bought its share in 1981 from ICIC, its 10 percent share from ICIC.

Senator KERRY. Are you familiar with the share transactions that took place with respect to First American?

Mr. AL SAYEGH. Yes, Senator, I am familiar.

Senator KERRY. Can you share with the committee what the circumstances were that led Abu Dhabi to acquire an interest in First American Bank at the time it was known as Financial General Bankshares in 1977, 1978?

Mr. AL SAYEGH. Yes. The Abu Dhabi investments in the American Bank are twofold. They are investments of Their Highnesses, Sheikh Zayed bin Sultan Al Nahyan and the President and those of his crown prince, Sheikh Khalifa bin Zayed Al Nahyan, and those of ADIA, separate from these two individuals. And I am not—I was not there when the decisions were made, but I would presume they were approached to become ambassadors and invest-

ed because they felt it was a good place to put their money. On this basis, carried the instructions.

Senator KERRY. Do you know if the CCAH acquisition then was originally a partnership that involved Sheikh Kamal Adham, Faisal Saud Al Fulaij and Zayed Abu Dhabi?

Mr. AL SAYEGH. Their Highnesses, I believe, participated in the initial offering of CCAH with certain percentages. They made that investment at that time.

Senator KERRY. As a partnership?

Mr. AL SAYEGH. I'm not familiar with the mechanics, Senator, of how that holding was set up, but they—I am aware that they made an investment separate from that of CCAH nominees.

Senator KERRY. Do you know what the understanding of Sheikh Zayed was with respect to Sheikh Kamal Adham's investment and also of Fulaij's investment? Were they at risk or were they viewed to be investing on behalf of someone else?

Mr. AL SAYEGH. Well, Senator, Zayed Abu Dhabi is the president of a young nation which was being founded at the time. And he spent all his time and energy in making and running the country. He is not the person who makes the investment decisions. And he does not involve himself with day to day decisions regarding how his money is invested.

He is very much isolated from this process and there are people in the departments and managers who would take care of that for him.

Senator KERRY. Let me ask the question more fairly, then. Understanding well how he might be preoccupied and somewhat distant from that kind of choice, do you know what the understanding of whatever investment advisors who might have made the decision would have been? Did they understand Mr. Al Fulaij and Sheikh Ahmad to be personally investing and at risk, or did they understand them to be representing, if you know?

Mr. AL SAYEGH. Our knowledge in Abu Dhabi of the nominee arrangements that BCCI used to purchase the shares of CCAH was not, did not exist until April or the spring of 1990 and the summer of 1990 when we became majority shareholders. We discovered documents, we discovered evidence which we turned over to the Federal Reserve, which then was used as the base for further cooperation on the investigations that were ongoing in the United States.

So we really didn't know, the private department didn't know, ADIA didn't know anything of what this arrangement, until we became majority shareholders in 1990.

Senator KERRY. Do you know why Sheikh Zayed would have appointed Agha Hasan Abedi to the investment committee of the private department in 1981 by decree? Do you know why he would have done that in 1981?

Mr. AL SAYEGH. I'm not terribly familiar with the private department affairs. Mr. Abedi was until only recently a highly respected individual everywhere he went. He was supposedly making very good investment decisions on behalf of all the shareholders of BCCI. His bank was growing in leaps and was doing extraordinary, very well, you know. The growth of the bank is something which we all know about.

And that was audited and that was something which was a fact as far as most people were concerned. So he was a trusted, if you like, banker. And the private department did bank with BCCI because of this reputation and because of this reputation that is supported by the fact that the bank is growing in 60 counties, et cetera, et cetera.

So I wouldn't be surprised if he used his reputation to become involved in the affairs of the private department. But I am personally not aware.

Senator KERRY. Let me turn for a moment, if I can, to Senator Brown and then come back in a second.

Senator BROWN. I was interested in getting a feel for the scope of the sheikh and Their Highnesses' total investment in the BCCI entities, in the whole range of related BCCI entities.

Would you have an estimate of the total net amount they would have put into all of these entities over the years?

Mr. AL SAYEGH. I don't have an estimate right away, but in our submission, in our written submission, Senator, we give the details of Their Highnesses and ADIA and the Government of Abu Dhabi investments over the years.

It's very detailed information. But they have invested substantially and they were almost—our total investment reached 30 or 34 percent by 1990. That was increased, as you know, to 77 percent in the spring of 1990.

Senator BROWN. The estimates that we have seen have ranged as high as a total investment of, in the neighborhood of \$2 billion. Is that in the ballpark?

Mr. AL SAYEGH. That is perhaps in the ballpark. But is that prior to 1990?

Senator BROWN. Well, I was thinking in terms of what the total amount was put in, not necessarily the—

Mr. AL SAYEGH. Because we invest, we supported the bank substantially in April of 1990.

Senator BROWN. So it would have been an excess of that \$2 billion.

Mr. AL SAYEGH. Well, we paid \$1.2 billion in additional funds to the bank in the spring of 1990.

Senator BROWN. So you could well be in the \$3 billion area or above?

Mr. AL SAYEGH. It's possible, Senator, I'm not certain.

Senator BROWN. Do you have any kind of an estimate of what the current value of that total investment is?

Mr. AL SAYEGH. The bank is bust, Senator. I don't think there is much value left for shareholders.

Senator BROWN. In effect, what appears to be an investment that cost in excess of \$3 billion is simply worthless today?

Mr. AL SAYEGH. Yes, our investment as shareholders in the Bank of BCCI is worthless by virtue of the fact that the Bank of England and other regulators chose to close the bank on July 5th. Once that took place, there was no hope for shareholders, at least, to regain their invested moneys.

Senator BROWN. Obviously, that has got to be a very painful experience. Do you have observations that you would like to share with us in terms of recommended policies or in terms you have

learned that you would like to not repeat? What kind of lessons do you carry away from this experience?

Mr. AL SAYEGH. I believe there are global issues here and the world is learning to, has learned from this experience. We are now, you are establishing a bank on the continent or in the States, regulators are very keen to control global banks, if you like. The experience has taught us something about regulating banks, which we did not know. And that, I think, extends not to us only in the United Arab Emirates, but to everyone in the whole world who has to deal with banks.

And to the extent that investors also rely heavily on audited statements of banks or any other investments in making their assessments, I think we all also learned to be very careful in making a heavy reliance on such statements, because auditors can make mistakes, auditors can be construed to be negligent. And that, in our case, because we relied so heavily on these audited statements, has led to this very painful loss of investments.

Personally, I have learned to use the limited resources of my own people at all times and not to rely on anybody else entirely for advice and/or help, that we must be always in control of all aspects of our lives and our investments and not rely on anyone whom we trust because of their reputation or because of a period of time in which we've had good relationships with. We must do our due diligence very much using our own people, not someone else's people.

Senator BROWN. Is it your feeling that the audited financial statements were simply misleading?

Mr. AL SAYEGH. It is my contention, Senator, that for 17 or 18 years we've had the same auditors going through their audits and not detecting anything that took place in this bank.

And now, when we look back and see what took place, it is not like simple misstatements of facts. We're talking about significant material. And those are accounting terms. If you've dealt with accountants, significant and material misstatements of facts has taken place. And nobody in those audit firms managed to detect that?

Not only is it misleading, or was it misleading, I believe there was serious negligence that took place here. And that is a subject which we and you would probably have a great deal to review.

The highest professional group in Britain is reviewing—is conducting a peers review of both firms, Price Waterhouse and Ernst & Young for their role in auditing the bank. And so there is serious reasons to believe that there were mistakes, negligence, and misstatements that took place.

Senator BROWN. I do not mean to push for a statement you are uncomfortable in making. But obviously the depth of the mistakes was in the hundreds of millions of dollars—and perhaps billions—as has already become public.

Would the Sheikh have invested the additional money if he had known the truth about the institution?

Mr. AL SAYEGH. We did make the investments in April of 1990 with some knowledge of the problems that took place. And we would have been, in my opinion, very reluctant if we had known, at that time, the full extent of the fraud that took place. Because when we made that investment in the management of the bank,

and the auditors of the bank, and the regulators of the bank all made the case for the potential for this bank continuing to exist; and in the long-run making a profit.

And it was a bank established in 60 countries. There was value there for investors. So on the premises that there was value, and that the bank will continue, we went ahead and made our additional investments which we believed would lead to future profits.

But that was all shut out of the place by the closure of the bank on July 5—despite all our efforts in the interim to restructure, to change management, to investigate the problems of the bank, provide money for any amounts which were missing—all these efforts which were done in consultation with the regulators and in view of the advice we were receiving, collapsed July 5.

We believe the facts that we knew in April of 1990 what allowed us to make that investment decision. But we didn't know the full story.

Senator BROWN. Looking back on it—and I do not mean to press you for an answer here. If you are comfortable in sharing your thoughts, I think we would be interested in it.

But looking back on it, is there information that other governments had that you wish or you feel should have been shared with you? And is there information about the bank that you had that you wished you had shared with other governments?

Is there a breakdown here?

Mr. AL SAYEGH. We would have liked the regulators to have had in this case—in many jurisdictions—we would have liked them to have had enough information in the bank to help us. But I don't think they did. I think they just simply did not know very much about the bank, which is a regulatory problem.

We didn't know anything about the bank because of our passive role in the past. And once we became familiar with the problems we started an investigation, we shared our information with the regulators, with the auditors. And yes, probably in the months which led to the closure of the bank, we would have liked to be—to have been consulted. We had proven our goodwill by cooperating with the regulators all along. And we would have liked them not to call us one morning and say look, the bank is closed. That was, in our opinion, not very responsible.

We had proven that we were willing to support the bank. We had proven that we were willing to share information. And they did not reciprocate this attitude which—yes—upsets us.

Senator BROWN. The implication of what you have said—and I mention it—not to put you on the spot, but I think for guidance here—is that you would have considered other actions, and perhaps even putting up more capital if they had worked with you.

Mr. AL SAYEGH. Well, we had already put in place a restructuring plan which we thought was adequate. At the time of the closure of the bank we were—we had finalized all arrangements for refinancing the bank, for restructuring it into three, separate entities so that they could be regulated easier. We changed the management. We were—we had hired people, actually, who never made it who are without jobs now into the bank so that we had done a series of things which we believed were adequate to save the bank.

And on top of that, we were investigating the irregularities and sharing this information with others. So I am not certain how much more money we would have put into the bank—beyond what the guarantees, the assurances, the new capital which was all complete in the summer of 1991 because I am not there—I was not there to make those decisions. And I still do not make these decisions.

But we had a plan to save the bank. And that plan collapsed on July 5.

Senator BROWN. Thank you.

Mr. AL SAYEGH. Thank you.

Senator KERRY. Mr. Al Sayegh, let me take advantage, if I can, for a minute of your presence to ask you some questions that would help the committee to understand some of the things that we are trying to sort out here.

Can you help us to understand why you have this relationship in 1978 that you described, where Mr. Abedi became involved as a banker and by 1981 Sheikh Zayed had issued a decree in which you became part of the private investment section of the country; and then in late 1981 Sheikh Zayed instructed that all of his personal oil revenues were to go directly to BCCI under Abedi's control.

That seems to intimate a relationship that is closer than just a banker. There seems to be a great deal of faith and trust in him.

Mr. AL SAYEGH. Well, Mr. Abedi was a person that the authorities in the UAE trusted. And that goes for, I guess, many personalities of very important stature, worldwide.

The details of how he became trusted and to what extent that trust entitled him to become a banker responsible for Their Highness' investments is something I am not personally aware of.

But I am aware of the fact that—

Senator KERRY. That he was trusted.

Mr. AL SAYEGH. That he was trusted.

Senator KERRY. Well, clearly he was trusted, if all of the Sheikh's personal oil revenues are going directly into BCCI in 1981.

Mr. AL SAYEGH. I don't think that's a correct statement. I'm not certain Their Highness would place all their revenues into one hand. But to me, the issue—which is of importance here, Senator—is the fact that he was a reputable banker who claims he could make returns, high returns, on any money that he has control of, whether it's invested in BCCI or whether he's taken that money to—under fiduciary terms—and used them to invest himself into other ventures.

He was the banker par excellence. He was the person who had, in fact, this bank which was making this incredible returns and growing, world-wide, and doing extremely well.

Senator KERRY. So that is why he was—

Mr. AL SAYEGH. That is why he was trusted.

Senator KERRY. In 1990, after the newspapers and magazines had been filled with stories of BCCI, and after indictments in this country, and after the plea bargain, Mr. Naqvi basically confessed to everything that had taken place, and did so in Abu Dhabi.

Mr. AL SAYEGH. In which year?

Senator KERRY. In 1990—April and May of 1990.

Mr. Abedi then flew to Abu Dhabi to plead for asylum for Mr. Naqvi and his friends. At that time, Abu Dhabi—through Sheikh Zayed—decides to put \$4 billion into the bank.

And the question, obviously, is why, in view of the criminal activity and in view of Mr. Naqvi's statements would you then decide to put an additional \$4 billion into the bank?

Mr. AL SAYEGH. Can I just point out to some facts here, Senator?

When we—when the bank was in trouble in April of 1990, it was Mr. Naqvi who came to the investors in Abu Dhabi and said that there are problems with the bank. And he referred them to the findings—initially, to the findings of Price Waterhouse.

Price Waterhouse had come at that time for the first time to tell us there are deceitful accounts, in April of 1990. We used that information to decide that our investments in the bank were at great danger of being lost completely.

The bank, in the view of the auditors and regulators at the time could fail if there was no injection of additional capital.

So it wasn't Abedi seeking asylum or anything. He was jumping on the planes to come to Abu Dhabi to convince Abu Dhabi that it's still worthwhile to make an additional investment in the bank. And that is what we did.

It wasn't the \$4 billion which we mentioned. It was the \$1.2 billion that resulted in increasing our shares to a majority shareholder.

So no one trusted Naqvi after that date. The minute we became majority shareholders and rescued the bank, we moved to remove them from executive power and use him only to shed some more light on really what is the problem with the bank.

We knew nothing, and we now have one man—and that is the extent of how the fraud was handled. We have one man coming, telling us there are problems. So we used them and we made them available to the investigating committee, which was made up of Price Waterhouse, of Ernst & Young, and the majority shareholders, to shed some light on the extent of the problems.

Without Naqvi, we would have known very little. Because the bank was run—was not run like a bank. There were no records showing this took place readily available. And we didn't have him in an executive role, but we did have him to lend us some information.

Senator KERRY. Do you know who made the decision to take over BCCI as a majority shareholder?

Mr. AL SAYEGH. The Department of Finance.

Senator KERRY. In 1990?

Mr. AL SAYEGH. Yes, the Department of Finance became the investor of the additional shares, which led to the injection of the new—

Senator KERRY. The Department—who made the decision?

Mr. AL SAYEGH. The Department of Finance is chaired by a Chairman, Mr. Habroutch, who was a government member.

Senator KERRY. Did he do this on his own, or did Sheikh Zayed say to him I instruct you to do this?

Mr. AL SAYEGH. No, there were—those are investment decisions made by the government, not by Their Highness. Their Highness ratified all decisions of this nature in the final analysis.

But they are made by investors and analysts. And it takes into account protecting or making money—protecting an investment or making money.

Once those decisions are made by the Government, yes, sure, Their Highness come to know about them.

Senator KERRY. Mr. Zafar Iqbar was placed in charge. Is that correct?

Mr. AL SAYEGH. Yes, Mr. Zafar Iqbar, who was a manager, and Abu Dhabi was made acting managing director, and then was—in the subsequent board meeting in the fall, confirmed in his post.

Senator KERRY. Who made the decision to put him in charge?

Mr. AL SAYEGH. I'm not personally aware which of the investors made that decision. There are now three, different investors representing UAE interests: the Department of Finance, the Department of Private Affairs, and ADIA. And they—and they are all separate entities. Which entity made the decision, I am not certain.

But collectively, the majority shareholders, I think placed him.

Senator KERRY. Well, when you say collectively the majority shareholders—the majority shareholders, then, was Sheikh Zayed and family, correct?

Mr. AL SAYEGH. No, Senator.

Senator KERRY. Who would that have been at that point?

Mr. AL SAYEGH. The majority shareholders—the breakup is, I think, like this: 30 percent the government of Abu Dhabi through the Department of Finance; 10 percent ADIA; and that leaves 39 percent, I think, to the private department of Their Highness.

Senator KERRY. So 39 percent is private department of Their Highness.

Mr. AL SAYEGH. Yes, sir.

Senator KERRY. 10 percent is ADIA. And ADIA represents the oil revenue of the country, or Their Highness.

Mr. AL SAYEGH. That is the surpluses of the Abu Dhabi government which are being invested for future generations.

Senator KERRY. And a private department is, essentially, Sheikh Zayed, correct?

Mr. AL SAYEGH. The private department is the—yes—the handling of the affairs of Their Highnesses, the investments, and other concerns.

Senator KERRY. So the majority of the majority shareholders, is Sheikh Zayed—almost 40 percent?

Mr. AL SAYEGH. Almost 40 percent is the government. You have 10 percent ADIA, and 30 percent the Department of Finance.

Senator KERRY. Who calls the shots in ADIA?

Mr. AL SAYEGH. The managing director calls the shots in ADIA, which I have just given his name.

Senator KERRY. Did the Crown Prince make the decision to put Mr. Iqbar in, do you know?

Mr. AL SAYEGH. I'm not personally aware, as I mentioned, who made the decision, Senator.

Senator KERRY. Do you know why the government insisted on moving BCCI's records from London to Abu Dhabi in the spring of 1990?

Mr. AL SAYEGH. The decision to move the headquarters of the bank to Abu Dhabi was done in consultation with the regulators in

Europe. And they wanted that to be done as quickly as possible because they were not very comfortable, I guess, with the role they were playing.

And so that decision to move the headquarters—which was done in consultation with the regulators, actually, at their insistence, led to—of course—moving some of the records of the bank to Abu Dhabi.

There are almost 160 million pieces of documents related to the bank, worldwide. Not all of those were moved to Abu Dhabi or to the headquarters in Abu Dhabi. And most of them remain scattered in the branches of the bank, worldwide.

Senator KERRY. This committee has learned—and I wonder if you have also learned—that documents in the Grand Caymans were shredded in June of 1991. Were you aware of that?

Mr. AL SAYEGH. I'm not aware of that.

Senator KERRY. You have never had anybody inform you of any documents being destroyed?

Mr. AL SAYEGH. In June of 1991?

Senator KERRY. Or at any other time.

Mr. AL SAYEGH. No, Senator.

Senator KERRY. What has happened to the records since they have been in Abu Dhabi?

Mr. AL SAYEGH. We have two categories of records, as I've mentioned, Senator. You have the records of the bank, whether in the headquarters or in the branches, and those were on premises. And a court-appointed receiver is in custody of those documents. And they are—and the Naqvi files are amongst them.

We've had access to these files; Touche Ross had access to these files. And the investigators from the UAE prosecutor's office had access to these files.

Senator KERRY. Why did the government of Abu Dhabi fire Mr. Clifford and Mr. Altman as lawyers in November of 1990?

Mr. AL SAYEGH. I don't think they were ever our lawyers, Senator. But you may—I believe they are not our lawyers.

Senator KERRY. BCCI's lawyers—were they not representing BCCI?

Mr. AL SAYEGH. I thought they were representing the First American Bank.

Senator KERRY. At that time they were representing BCCI, also. They were, in fact, terminated as attorneys for BCCI by the Government then. You may not be aware, I just was curious if you knew.

Mr. AL SAYEGH. I'm not aware of that.

Senator KERRY. Does the government of Abu Dhabi own the First American Bank, today?

Mr. AL SAYEGH. The government of Abu Dhabi has a legal, declared ownership of—in First American Bank. They are—ADIA and the private department of Their Highness has a percentage shareholding in the CCAH, which is legal; which was declared to the Federal Reserves at some public effort.

Senator KERRY. And how much has Abu Dhabi invested in First American?

Mr. AL SAYEGH. I'm not sure of how much, the amount. But I know that ADIA owns, I think, 10 percent. And—it's in my statement, Senator. I could——

Senator KERRY. That's the full amount reflected in the——

Mr. AL SAYEGH. The whole share transactions are broken down in the public statement.

Mr. LIEBMAN. It is contained in the statement, Senator.

Senator KERRY. According to the stock certificates of CCAH and BCCI documents, in 1978 Sheikh Kamal Adham purchased some 262,440 shares of Financial General Bank shares for about \$4 million from Sheikh Zayed—from Sheikh Sultan bin Zayed.

Do you know whether or not Sheikh Sultan authorized that particular purchase of shares, originally, or was that done without his knowledge—if you know, at this point from your review?

Mr. AL SAYEGH. I believe the shares were held in Sheikh Sultan bin Zaed's name, and that these were legally sold to Amal Adham, at the time. That is my belief.

Senator KERRY. When did the Justice Department and the New York District Attorney first make the request for cooperation with you, do you know?

Mr. AL SAYEGH. We've been receiving delegations from the United States, I would believe, since September of last year. The—that was chiefly the Department of Justice, Mr. Mueller, and others. We met with them, again, I believe in December of 1990. And we've had continuous discussions at least since those dates on what is it that is of relevance—what is it that is relevant to them, which they will need and which we can supply to them? And we are here today to reaffirm our willingness to continue those discussions, to arrive at their arrangement where we will mutually help each other.

Senator KERRY. Well, I had some other questions on that whole process. But in view of your twice-stated willingness to resolve that quickly, I am not going to belabor that. And we certainly accept that offer.

I would like to understand a couple of other things. What is the function of James Lake and his firm on behalf of Sheikh Zayed now?

Mr. AL SAYEGH. James Lake has been hired by our lawyers from the beginning of the—after the closure of the bank. And their role is chiefly concerned with handling the media in the United States. You have—and you are aware of—extensive coverage by U.S. press of the events subsequent to July 5. And Mr. Lake's firm, which is a reputable firm, has been very helpful in bringing our side of the story to the American public and the press.

Senator KERRY. Do you know who referred Mr. Lake to Sheikh Zayed?

Mr. AL SAYEGH. Sheikh Zayed does not know Mr. Lake.

Senator KERRY. So you have never—your government played no part in hiring him, is that what you are saying?

Mr. AL SAYEGH. Yes, Senator.

Senator KERRY. Hired by lawyers in this country?

Mr. AL SAYEGH. They were hired by our lawyers in Washington to help us on the media.

Senator KERRY. Now, help me, also, if you will, to understand something.

You talk of the separation of powers, et cetera. I was looking at your constitution, and at your laws. And everyone of your laws begin with the following: "We, Zayed bin Sultan Al Nayhan have issued the following law"—which appears to be the creation of a law by royal decree.

Can the Sheikh change any law by decree, by saying we hereby order that?

Mr. AL SAYEGH. No, if you go through, beyond the preamble, you would notice that changes to any law is brought about through a process—not unlike any other process in any other country, where a ministry makes recommendations for changes, or makes recommendations for new laws for that month.

He is the sovereign ruler and/or—in this case, the sovereign president of the country. And it is in his name that these rules and regulations are issued, having been approved by the ministries involved, having been endorsed by the supreme ruling—by the supreme counsel, and the consultative counsel, which is a appointed parliament, if you like.

So that is the process. His Highness, in the final analysis, just issues what is the will of the government, if you like.

Senator KERRY. Let me just take a moment if I may, here. [Pause.]

I have a couple of more questions. I know Senator Brown wanted to try to get an opportunity for some Justice Department folks—and I share that—to get back here and explain a couple of things from this morning. And we want to do that.

I understand there may be a vote forthcoming.

Earlier in your comments you rightly, I think, given the facts here, criticized accountants and others as negligent and implied that a lot of these losses came about as a consequence of that negligence. You clearly—and you were not the only one—a lot of people were getting some sign-offs from some firms along the way here that seemed to indicate that everything was fine with BCCI.

And you indicated, obviously, that if you had known more, things might have been different in this situation. But I wanted to ask you to clarify for us the meaning of the fact that Mr. Mazrui was on the board since 1981 and he had to approve all of the loans over a certain limit.

So each of those loans would have, in fact, been seen by somebody, and had to have had approval outside of the accounting process. And from 1986 on, he was chairman of the executive committee of the board. Therefore, in a sense, Mr. Abedi was really directly responsible to an individual within the private department, therefore representing the Sheikh.

And the question is, therefore, is Mr. Mazrui negligent as a director—and if that negligent passes up? If he approved all those loans over a certain amount, and was responsible to the board, it seems to me that maybe it is not as simple as just passing it off on to the accountants, themselves, or the Bank of England.

Mr. AL SAYEGH. We are not passing off blame, per se, here. But we are saying we have become—we have been victimized, and we have lost billions of dollars without having had a direct role in the

process. We were, yes, represented on the board, and the board does look into loans and other matters related to the bank.

But, for example, the Gokal Co., which is a company that has the highest exposure—there is one of the biggest, bad loans. The management of the bank used 750 different accounts to get these loans through to this company. So the issue of fraud could not be detected by the board, because the board, as you know, receives a recommendation from the executive to grant a loan and this recommendation would spell out the financial position of this person or this company. But it doesn't say that there are 750 different companies for one member.

You, as a board member, are not—cannot find that because you are not aware of the fraud that took place, to make or to get these accounts or these loans to become the business—to come to the business of the board.

So while we have been victimized in our view by this process, we must reserve any judgments on board members who were several—not just Mr. Mazrui—but there are other board members. And some of them stayed on from the Bank of America times. And those board members collectively were reviewing documents which were being submitted by a corrupt and bad management.

And that was the extent of the damage—everything that was being done was worked out in a manner which could—which would—which was a cover-up. This is what we know now. Nobody knew that then—in Abu Dhabi, at least.

Senator KERRY. Are you familiar with what Mr. Bert Lance said with respect to the visit that he made discussing the Financial General Bank shares purchase with Sheikh Zayed in 1978?

Mr. AL SAYEGH. No, Senator, I am not familiar with that.

Senator KERRY. Well, then if you are not familiar, I am not going to ask you about it.

Mr. AL SAYEGH. Thank you.

Senator KERRY. That is fair.

I do have some additional questions. I wonder if there is a way, Mr. Liebman—I am not sure what Mr. Sayegh's schedule is going to be. I do not want to prolong this right now.

But I would like to be able to, perhaps, get some answers to some questions if we were to submit them in writing to you. Would that be possible?

Mr. LIEBMAN. Certainly, Senator. If you have questions that you would like to submit in writing, we would be happy to respond to them.

Senator KERRY. What is your schedule, Mr. Al Sayegh? Are you going back immediately, or would be able to do that in short order before you return?

Mr. LIEBMAN. Senator, if you want to submit them to us quickly, I am sure that we can expedite a response.

Senator KERRY. I would really appreciate that, and I think it would save us this evening and give Senator Brown an opportunity to get a couple of folks on, which we would like to do.

I think the most important thing, obviously, to convey to Mr. Al Sayegh—and I hope you sense that the committee is not trying to do anything except open up the door or a window on this so that people can understand precisely what has happened to whatever

degree Abu Dhabi has been victimized. It seems to all of us here that the faster documents are provided, and the faster people are provided, the more rapidly that victimization will become clearer to people, and the more rapidly, I think, this whole thing can be sorted out, I would think, to the advantage of your, your investors, your country, and reputation.

And so, obviously, we welcome your presence here today and your willingness to work out these details. I think nothing could be more helpful or more important, and we would be very, very grateful to you for that. As I said at the opening, our countries have had a good relationship of cooperation in the past and nobody is seeking to see that unsettled.

Mr. AL SAYEGH. Thank you very much for inviting us, Senator. We are very pleased to have appeared in front of you. We hope this begins a relationship—a personal relationship which you can use in your efforts to bring about good answers to many of the remaining questions and to right what has been wrong.

We believe this process, as you have mentioned, will open doors and will solidify our relationship. Our commitment to cooperate is one which we hope will help us as much as it will help you. And to that extent, again, I would like to very much thank yourself and Senator Brown and others on this committee for all their efforts to date on this case. Thank you.

Senator KERRY. Can I just understand something, so I am clear? And I apologize for going back. Previously, we had been informed about some problems of law in terms of access to Mr. Naqvi and Mr. Iqbal. I understand from your testimony today there is no problem. We will be able to have access to them. Is that correct?

Mr. AL SAYEGH. In terms of the applicable laws, I am not a lawyer. I don't know exactly the exact terms you are referring to. We are, however, very much keen to see the cooperation and agreement ironed out between the competent authorities in both countries, in which we understand there will be opportunities and access to induce the Federal prosecutors and UAE to allow anyone who is interested from the U.S. to come and so those individuals.

That is really the two pillars of what I understand the terms are for our cooperation. Documents and witnesses. And I may add, also, we have met as members of the working group with Mr. Mueller and others. And we are also going to be available to answer any questions and to facilitate cooperation. This is the idea. To have agreement.

Senator KERRY. Well, is there anything that stands in the way of the idea?

Mr. AL SAYEGH. I do not think so, Senator. I think the idea of cooperation is just taking off from this beginning onward, and I think nothing will obstruct it, personally.

Senator KERRY. Thank you.

Mr. AL SAYEGH. Thank you very much.

Senator KERRY. Thank you very much. We appreciate your presence. We will insert here any materials you have provided us today, and any answers we later receive to our written questions.

[The information referred to follows:]

SHAREHOLDING IN BOCI HOLDINGS (LUXEMBOURG) S.A.*

H.H. SHEIKH ZAYED BIN SULTAN AL-NAHYAN

<u>Year</u>	<u>Purchases</u>	<u>Sales</u>	<u>Offerings</u>	<u>Dividends</u>	<u>31st December Holdings (000's)</u>	<u>Percentage</u>
1975	12,000				12,000	2.26%
1976		(10,000)		1,529	3,529	.59%
1977				1,176	4,705	.47%
1978			1,882		6,587	.47%
1979			1,412	471	8,470	.47%
1980	80,000		1,412	471	90,353	4.11%
1981		(80,000)	2,353	4,940	17,646	.47%
1982	90,586	(18,117)	4,704	9,882	104,701	.47%
1983				43,528	148,229	.47%
1984	1,706,250		4,706	44,468	1,903,653	4.54%
1985	42,656		64,890	16,058 310,413	2,321,612	4.33%
1986					2,321,612	3.87%
1987				235,704	2,557,316	3.87%
1988				255,732	2,813,048	3.87%
1989			72,651		2,885,699	3.87%
1990					2,885,699	3.42%

*Based on preliminary review of documents

SHAREHOLDING IN BOCI HOLDINGS (LUXEMBOURG) S.A.*

H.H. SHEIKH KHALIFA BIN ZAYED AL-NAHYAN

<u>Year</u>	<u>Purchases</u>	<u>Sales</u>	<u>Offerings</u>	<u>Dividends</u>	<u>31st December Holdings (000's)</u>	<u>Percentage</u>
1975	2,400				2,400	.45%
1976				1,835	4,235	.71%
1977			1,412	1,412	7,059	.71%
1978	8,000		2,823		17,882	1.28%
1979			3,717	706	22,305	1.24%
1980	40,000		10,033	1,239	73,577	3.34%
1981			198,021	35,116	306,715	8.18%
1982	1,550,297	(310,059)	80,536	164,414	1,791,903	8.05%
1983	1,312,500			1,007,449	4,111,852	13.05%
1984		131,250 196,875	124,766	1,194,180	5,233,923	12.48%
1985			187,149	1,274,716	6,695,788	12.48%
1986	5,075,562				11,771,350	19.65%
1987				1,195,099	12,966,449	19.65%
1988				1,296,645	14,263,094	19.65%
1989			368,336		14,631,450	19.65%
1990	14,963,732				29,595,192	35.03%

*Based on preliminary review of documents

SHAREHOLDING IN BCCI HOLDINGS (LUXEMBOURG) S.A. *

Abu Dhabi Investment Authority

<u>Year</u>	<u>Purchases</u>	<u>Sales</u>	<u>Offerings</u>	<u>Dividends</u>	<u>31st December Holdings (000's)</u>	<u>Percentage</u>
1975						
1976						
1977						
1978						
1979						
1980						
1981	325,000		50,000		375,000	10%
1982	1,925,000	(385,000)	100,000	210,000	2,225,000	10%
1983				925,000	3,150,000	10%
1984			100,000	945,500	4,195,000	10%
1985			150,000	1,021,687	5,366,687	10%
1986			875,000		6,241,687	10.42%
1987				633,694	6,875,381	10.42%
1988				687,538	7,562,919	10.42%
1989			195,323		7,758,242	10.42%
1990					7,758,242	9.18%

*Based on preliminary review of documents

SHAREHOLDING IN BOCI HOLDINGS (LUXEMBOURG) S.A. *

GOVERNMENT OF ABU DHABI FINANCE DEPARTMENT

<u>Year</u>	<u>Purchases</u>	<u>Sales</u>	<u>Offerings</u>	<u>Dividends</u>	<u>31st December</u> <u>Holdings (000's)</u>	<u>Percentage</u>
1975						
1976						
1977						
1978						
1979						
1980						
1981						
1982						
1983						
1984						
1985						
1986						
1987						
1988						
1989						
1990	17,873,940		10,000,000		24,894,950	29.47%

*Based on preliminary review of documents

APPENDIX

SUMMARY OF RECORDED CCAM STOCK TRANSACTIONS, 1982-1989

Legend:

Balan. In = Balance of shares at the beginning of the period.

Bought = Shares purchased through rights offering or
from another shareholder, and the price paid.

Sold or Foregone = Shares sold or shares that were available to the
shareholder in a rights offering but foregone,
and the price paid.

Balan. Out = Balance of shares at the end of the period.

% In = Percentage of total shares held at the beginning of the period.

% Out = Percentage of total shares held at the end of the period.

{ = Shares obtained through a rights offering.

< = Shares waived in rights offering.

Note: No transactions occurred in 1984.

Tender Offer of March 2, 1982

<u>Name</u>	<u>\$ In</u>	<u>Balan.</u> <u>In</u>	<u>Bought</u>	<u>Sold or</u> <u>Foregone</u>	<u>Balan.</u> <u>Out</u>	<u>\$ Out</u>
Kamal Adham	-	-	19,050	-	19,050	19.05%
Crescent Holding Co.	-	-	8,240	-	8,240	8.24%
Stock Holding Co.	-	-	8,240	-	8,240	8.24%
Mashriq Holding Co.	-	-	7,660	-	7,660	7.66%
Abdullah Darwaish ¹	-	-	13,720	-	13,720	13.72%
Faisal Saud al-Fulaij	-	-	7,180	-	7,180	7.18%
Abu Dhabi Inv. Auth.	-	-	8,240	-	8,240	8.24%
A.R. Khalil	-	-	8,240	-	8,240	8.24%
Humaid bin Rashid al-Macmi	-	-	7,070	-	7,070	7.07%
A.M. Shorafa	-	-	6,480	-	6,480	6.48%
Mohammad Hussain Qabazard	-	-	2,940	-	2,940	2.94%
Gulf Inv. Real Estate Co.	-	-	1,470	-	1,470	1.47%
Real Estate Develop. Co.	-	-	880	-	880	0.88%
Sayed Jawhary	-	-	590	-	590	0.59%
					<u>100,000</u>	<u>100.00%</u>

1. Abdullah Darwaish acted as personal representative for Sheikh Mohammad bin Zayed al-Mahyan.

Stock Purchase of August 26, 1982

<u>NAME</u>	<u>% IN</u>	<u>Balan.</u> <u>In</u>	<u>Bought</u>	<u>Sold or</u> <u>Foregone</u>	<u>Balan.</u> <u>Out</u>	<u>% Out</u>
Kamal Adham	19.05%	19,050	-	-	19,050	16.32%
Crescent Holding Co.	8.24%	8,240	-	-	8,240	7.06%
Stock Holding Co.	8.24%	8,240	-	-	8,240	7.06%
Mashriq Holding Co.	7.66%	7,660	-	-	7,660	6.56%
Abdullah Darwaish	13.72%	13,720	-	-	13,720	11.76%
Faisal Saud al-Fulaij	7.18%	7,180	2,835 @ \$1800	-	10,015	8.58%
Abu Dhabi Inv. Auth.	8.24%	8,240	-	-	8,240	7.06%
A.R. Khalil	8.24%	8,240	1,667 @ \$1800	-	9,907	8.49%
Humaid bin Rashid al-Wacmi	7.07%	7,070	-	-	7,070	6.06%
A.M. Shorafa	6.48%	6,480	1,111 @ \$1800	-	7,591	6.51%
Mohammad Hussain Qabazard	2.94%	2,940	-	-	2,940	2.52%
Gulf Inv. Real Estate Co.	1.47%	1,470	-	-	1,470	1.26%
Real Estate Develop. Co.	0.88%	880	-	-	880	0.75%
Sayed Jawhary	0.59%	590	-	-	590	0.51%
Khalifa bin Sayed al Nahyan	0.00%	0	11,087 @ \$1800	-	11,087	9.50%
					<u>116,700</u>	<u>100.00%</u>

Transactions in 1983, Including Rights Offering of December 22, 1983

<u>Name</u>	<u>% In</u>	<u>Balan. In</u>	<u>Bought</u>	<u>Sold or Foregone</u>	<u>Balan. Out</u>	<u>% Out</u>
Kamal Adham	16.32%	19,050	2,940 @ \$696 ¹ 1,470 @ \$1905 ² { 6,564 @ \$1905 { 295 @ \$1905 ³	<1,351 @ \$1905 ⁴ 4,000 @ N/A ⁷	26,319	16.86%
Crescent Holding Co.	7.06%	8,240	{ 2,780 @ \$1905 { 1,351 @ \$1905 ⁴ { 374 @ \$1905 ³	-	12,745	8.16%
Stock Holding Co.	7.06%	8,240	{ 2,780 @ \$1905	-	11,020	7.06%
Mashriq Holding Co.	6.56%	7,660	{ 2,583 @ \$1905	-	10,243	6.56%
Mohammad bin Zayed al Mahyan ⁵	11.76%	13,720	-	13,720 @ N/A ⁶	0	0.00%
Faisal Saud al- Fulaij	8.58%	10,015	{ 3,378 @ \$1905	-	13,393	8.58%
Abu Dhabi Inv. Auth.	7.06%	8,240	{ 2,780 @ \$1905	-	11,020	7.06%
A.R. Khalil	8.49%	9,907	{ 3,343 @ \$1905	-	13,250	8.49%
Humaid bin Rashid al-Macmi	6.06%	7,070	{ 2,012 @ \$1905	< 374 @ \$1905 ³	9,082	5.82%
A.M. Shorafa	6.51%	7,591	{ 2,563 @ \$1905	-	10,154	6.51%
Mohammad Hussain Qabazard	2.52%	2,940	-	2,940 @ \$696 ¹	0	0.00%
Gulf Inv. Real Estate Co.	1.26%	1,470	-	1,470 @ \$1905 ²	0	0.00%
Real Estate Develop. Co.	0.75%	880	-	< 295 @ \$1905 ³	880	0.57%
Sayed Jawhary	0.51%	590	{ 201 @ \$1905	-	791	0.51%
Khalifa bin Zayed al Mahyan	9.50%	11,087	{ 3,741 @ \$1905	-	14,828	9.50%
Zayed bin Sultan al Mahyan	0.00%	0	13,720 @ N/A ⁶ { 4,630 @ \$1905	-	18,350	11.76%
Adham Corp.	0.00%	0	4,000 @ N/A ⁷	-	4,000	2.56%
					<u>156,075</u>	<u>100.00%</u>

1. On December 19, 1983, Kamal Adham bought 2,940 shares from Mohammad Hussain Qabazard.
2. On December 20, 1983, Kamal Adham bought 1,470 shares from Gulf Investment Real Estate Co.
3. In the December 1983 rights offering, Kamal Adham acquired 295 shares, rights to which were waived by Real Estate Development Co.
4. In the December 1983 rights offering, Crescent Holding Co. acquired 1,351 shares, rights to which were waived by Kamal Adham.
5. In the December 1983 rights offering, Crescent Holding Co. acquired 374 shares, rights to which were waived by Humaid bin Rashid al-Waami.
6. On December 16, 1983, Mohammad bin Sayed al Wahyan transferred his 13,720 shares to his father, Sheikh Sayed bin Sultan al Wahyan.
7. On December 31, 1983, Kamal Adham transferred 4,000 shares to Adham Corp.
8. In December 1982, Sheikh Mohammad bin Sayed al-Wahyan assumed legal title to his CCAE shares from Abdullah Darwaish.

Transactions in 1985 and 1986, Including Rights Offering of July 25, 1986

<u>NAME</u>	<u>% In</u>	<u>Balan.</u> <u>In</u>	<u>Bought</u>	<u>Sold or</u> <u>Foregone</u>	<u>Balan.</u> <u>Out</u>	<u>% Out</u>
Kamal Adham	16.86%	26,319	{8,544 @ \$2216	2,800 @ \$5000 ¹ 2,200 @ \$5000 ² 1,619 @ \$5000 ³	28,244	12.63%
Crescent Holding Co.	8.16%	12,745	2,800 @ \$5000 ¹	15,545 @ \$4044 ⁴	0	0.00%
Stock Holding Co.	7.06%	11,020	2,200 @ \$5000 ²	13,220 @ \$4044 ³	0	0.00%
Mashriq Holding Co.	6.56%	10,243	{8,550 @ \$2216, 13,220 @ \$4044 ³ 15,545 @ \$4044 ⁴	<4,495 @ \$2216 ¹⁰ <2,247 @ \$2216 ¹¹ 22,152 @ \$6094 ⁸ 3,746 @ \$2216 ⁷	21,660	9.68%
Faisal Saud al-Fulaij	8.58%	13,393	880 @ \$2100 ⁵ {6,190 @ \$2216	-	20,463	9.14%
Abu Dhabi Inv. Auth.	7.06%	11,020	{4,779 @ \$2216	-	15,799	7.06%
A.R. Khalil	8.49%	13,250	-	<5,747 @ \$2216 ⁹	13,250	5.92%
Humaid bin Rashid al-Macmi	5.82%	9,082	{3,939 @ \$2216	-	13,021	5.82%
A.M. Shorafa	6.51%	10,154	{6,731 @ \$2216, 1,619 @ \$5000 ³ 3,746 @ \$2216 ⁷	-	22,250	9.94%
Real Estate Develop. Co.	0.57%	880	-	880 @ \$2100 ⁵	0	0.00%
Sayed Jawhary	0.51%	791	{ 343 @ \$2216	-	1,134	0.51%
Khalifa bin Sayed al Mahyan	9.50%	14,828	{6,431 @ \$2216	-	21,259	9.50%
Sayed bin Sultan al Mahyan	11.76%	18,350	{7,959 @ \$2216	-	26,309	11.76%
Adham Corp.	2.56%	4,000	{1,735 @ \$2216	-	5,735	2.56%
Khalid bin Salim bin Mahfouz	0.00%	0	22,152 @ \$6094 ⁸	-	22,152	9.90%
Mohammad M. Hammoud	0.00%	0	{5,747 @ \$2216 ⁹	-	5,747	2.57%
Clark M. Clifford	0.00%	0	{4,495 @ \$2216 ¹⁰	-	4,495	2.00%
Robert A. Altman	0.00%	0	{2,247 @ \$2216 ¹¹	-	2,247	1.01%
					<u>223,765</u>	<u>100.00%</u>

1. On July 23, 1986, Kamal Adham sold 2,800 shares to Crescent Holding Co.
2. On July 23, 1986, Kamal Adham sold 2,200 shares to Stock Holding Co.
3. On July 24, 1986, Stock Holding Co. sold its 13,220-shares to Mashriq Holding Co.
4. On July 24, 1986, Crescent Holding Co. sold its 15,545 shares to Mashriq Holding Co.
5. On February 16, 1985, Real Estate Development Co. sold its 880 shares to Faisal Saud al-Fulaij.
6. On July 23, 1986, Kamal Adham sold 1,619 shares to Ali Mohammad Shorafa.
7. On July 24, 1986, Mashriq Holding Co. sold 3,746 shares to Ali Mohammad Shorafa.
8. On July 24, 1986, Mashriq Holding Co. sold 22,182 shares to five limited holding companies owned by the Sheikh Khalid bin Salem bin Mahfouz family.
9. In the July 1986 rights offering, Mohammad M. Hammoud acquired 5,747 shares, rights to which were waived by A.R. Khalil.
10. In the July 1986 rights offering, Clark M. Clifford acquired 4,495 shares, rights to which were waived by Mashriq Holding Co.
11. In the July 1986 rights offering, Robert A. Altman acquired 2,247 shares, rights to which were waived by Mashriq Holding Co.

Transactions in 1987, Including Rights Offering of August 14, 1987

Name	% IN	Balance In	Bought	Sold or Forfeited	Balance Out	% Out
Kamal Adham	12.63%	28,244	{5,974 @ \$2430		34,218	12.63%
Mashriq Holding Co.	9.68%	21,660	{4,581 @ \$2430		26,241	9.68%
Faisal Saud al-Fulaij	9.14%	20,463	{4,328 @ \$2430	-	24,791	9.14%
Abu Dhabi Inv. Auth.	7.06%	15,799	{3,342 @ \$2430	-	19,141	7.06%
A.R. Khalil	5.92%	13,250	-	<2,803 @ \$2430 ¹	13,250	4.89%
Humaid bin Rashid al-Wacmi	5.82%	13,021	{2,754 @ \$2430	-	15,775	5.82%
A.M. Shorafa	9.94%	22,250	{4,706 @ \$2430	-	26,956	9.94%
Sayed Jawhary	0.51%	1,134	{ 240 @ \$2430	-	1,374	0.51%
Khalifa bin Sayed al Mahyan	9.50%	21,259	{4,497 @ \$2430	-	25,756	9.50%
Sayed bin Sultan al Mahyan	11.76%	26,309	{5,565 @ \$2430	-	31,874	11.76%
Adham Corp.	2.56%	5,735	{1,213 @ \$2430	-	6,948	2.56%
Khalid bin Salim bin Mahfouz	9.90%	22,152	{4,685 @ \$2430	-	26,837	9.90%
Mohammad M. Hammoud	2.57%	5,747	{1,216 @ \$2430 {2,803 @ \$2430 ¹	-	9,766	3.60%
Clark M. Clifford	2.00%	4,495	{ 951 @ \$2430	-	5,446	2.00%
Robert A. Altman	1.01%	2,247	{ 475 @ \$2430	-	2,722	1.01%
					<u>271,095</u>	<u>100.00%</u>

1. In the August 1987 rights offering, Mohammad M. Hammoud purchased 2,803 shares, rights to which were waived by A.R. Khalil.

Transactions in 1988

<u>Name</u>	<u>% Int</u>	<u>Balance In</u>	<u>Bought</u>	<u>Sold or Foregone</u>	<u>Balance Out</u>	<u>% Out</u>
Kamal Adham	12.63%	34,218	-	-	34,218	12.63%
Mashriq Holding Co.	9.68%	26,241	-	-	26,241	9.68%
Faisal Saud al- Fulaij	9.14%	24,791	-	-	24,791	9.14%
Abu Dhabi Inv. Auth.	7.06%	19,141	-	-	19,141	7.06%
A.R. Khalil	4.89%	13,250	-	-	13,250	4.89%
Humaid bin Rashid al-Naomi	5.82%	15,775	-	-	15,775	5.82%
A.M. Shorafa	9.94%	26,956	-	-	26,956	9.94%
Sayed Jawhary	0.51%	1,134	-	-	1,374	0.51%
Khalifa bin Sayed al Mahyan	9.50%	25,756	-	-	25,756	9.50%
Sayed bin Sultan al Mahyan	11.76%	31,874	-	-	31,874	11.76%
Adham Corp.	2.56%	6,948	-	-	6,948	2.56%
Khalid bin Salim bin Mahfouz	9.90%	26,837	-	-	26,837	9.90%
Mohammad M. Hammoud	3.60%	9,766	3,200 @ \$6800 ¹ 1,600 @ \$6800 ²	-	14,566	5.37%
Clark M. Clifford	2.00%	5,446	-	3,200 @ \$6800 ¹	2,246	0.83%
Robert A. Altman	1.01%	2,722	-	1,600 @ \$6800 ²	1,122	0.41%
						<u>271,095 100.00%</u>

1. On March 1, 1988, Clark M. Clifford sold 3,200 shares to Mohammad M. Hammoud.

2. On March 1, 1988, Robert A. Altman sold 1,600 shares to Mohammad M. Hammoud.

Transactions in 1989, Including Rights Offering of July 18, 1989

NAME	% IN	Balance In	Bought	Sold or Foregone	Balance Out	% Out
Kamal Adham	12.63%	34,218	(2,275 @ \$2774	-	36,493	12.62%
Mashriq Holding Co.	9.68%	26,241	(1,745 @ \$2774	-	27,986	9.68%
Faisal Saud al-Fulaij	9.14%	24,791	(1,648 @ \$2774	-	26,439	9.14%
Abu Dhabi Inv. Auth.	7.06%	19,141	(1,273 @ \$2774	1,273 @ \$2774 ¹	19,141	6.62%
A.R. Khalil	4.89%	13,250	-	< 881 @ \$2774 ²	13,250	4.59%
Humaid bin Rashid al-Macmi	5.82%	15,775	(1,049 @ \$2774	-	16,824	5.82%
A.M. Shorafa	9.94%	26,955	(1,792 @ \$2774	-	28,748	9.94%
Sayed Jauchary	0.51%	1,374	(91 @ \$2774	-	1,465	0.51%
Khalifa bin Sayed al Mahyan	9.50%	25,756	(1,712 @ \$2774, 1,273 @ \$2774 ¹	-	28,741	9.94%
Sayed bin Sultan al Mahyan	11.76%	31,874	(2,120 @ \$2774	-	33,994	11.76%
Adham Corp.	2.56%	6,948	(462 @ \$2774	-	7,410	2.56%
Khalid bin Salim bin Mahfouz	9.90%	26,837	-	<1,785 @ \$2774 ³	26,837	9.28%
Mohammad M. Hammoud	5.37%	14,566	(968 @ \$2774, (881 @ \$2774 ² (1,785 @ \$2774 ³	-	18,200	6.30%
Clark M. Clifford	0.83%	2,246	(149 @ \$2774	-	2,395	0.83%
Robert A. Altman	0.41%	1,122	(75 @ \$2774	-	1,197	0.41%
						<u>289,120 100.00%</u>

1. After acquiring 1,273 shares in the July 1989 rights offering, the Abu Dhabi Investment Authority sold those shares to Sheikh Khalifa bin Sayed al Mahyan on July 18, 1989.

2. In the July 1989 rights offering, Mohammad M. Hammoud bought 881 shares, rights to which were waived by A.R. Khalil.

3. In the July 1989 rights offering, Mohammad M. Hammoud acquired 1,785 shares, rights to which were waived by Khalid bin Salim bin Mahfouz.

TRANSLATION

FEDERAL LAW NO.(6) OF 1973
CONCERNING IMMIGRATION AND RESIDENCE

WE ZAYED BIN SULTAN AL NAHYAN, The President of the United Arab Emirates, having examined the Provisional Constitution and in view of the proposal made by the Minister of Interior and the approval thereof by the Cabinet and the Federal National Council and the sanctioning thereof by the Federal Supreme Council;

HAVE ISSUED THE FOLLOWING LAW:

CHAPTER ONE
ENTRY OF ALIENS

Article (1)

Any individual not having the nationality of the United Arab Emirates is deemed an alien under the provisions of this Law.

Article (2)

Subject to the other provisions contained in this Law, no alien may enter the Country through any channel unless he possessed a valid passport or travelling document and a valid visa, entry permit or residence permit.

Nationals of countries, for which a decree is issued upon the proposal of the Minister of Interior, may be exempt from the condition of obtaining a visa or an entry permit, provided a reciprocal arrangement existed.

(**) The Executive Regulations to this Law have been released vide the Ministerial Decision No.12 of 1974, published in No. 21 of the Official Gazette.

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Article (3)

An alien may not enter the Country or depart from the Country except from the locations/points determined by the Minister of Interior by a decision issued by him, and after the passport or the travelling document has been officially endorsed by the appropriate official.

An alien shall comply with the provisions of the laws and the regulations in force at the entry and exit points.

Article (4)

Shipmasters, aircraft captains and drivers of vehicles and of other means of transport shall, upon arrival in and departure from the Country, submit to the appropriate officer a statement with the names and particulars of the crew and passengers of their ships, aircraft or vehicles and shall apprise the competent authorities of the names of the passengers who do not carry passports and of those about the correctness or validity of whose passports they have misgivings and shall not allow them to leave, get on or board the ship, aircraft or vehicle or the means of transport used.

CHAPTER TWO
ENTRY PERMITS AND VISAS

Article (5)

The entry permits and visas shall be issued, renewed and cancelled in accordance with the provisions of this Law, Bye-laws and directives issued by the Minister of Interior.

Article (6)

The issuance of the entry permits and visas shall fall under

CONT'D.../...

the jurisdiction of the Naturalization & Immigration Department, and the consular staff representing the State abroad shall grant entry visas in accordance with the regulations laid down for this purpose. The Minister of Interior may lay down the rules regulating the procedures and conditions under which residents in the Country could obtain entry permits for aliens residing abroad.

Article (7)

The immigration authorities at the international airport of any member Emirate in the Country may, in accordance with the regulations established by the Ministry of Interior, grant a visa for (96) ninety six hours to an alien entering the Country provided:

- (a) he holds a valid passport or travelling document to enter this Country and the country of his ultimate destination;
- (b) he holds a ticket to proceed with his journey;
- (c) he leaves the Country within (96) ninety six hours from the time he obtained the visa.

Article (8)

There shall be stated on each entry permit and visa the purpose of its holder's entry into the Country - whether for a visit, for employment or for residence.

Article (9)

The use of the entry permit and visa shall be valid for a period of two months and for one entry only.

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Article (10)

The entry permit and visa shall entitle its holder to stay in the Country for a period not exceeding thirty days.

Article (11)

If the visa is a visit visa, the alien shall not be allowed to work anywhere in the Country, whether with or without pay or as an employer.

In the case of an employment visa issued to the holder to work with a specific person or corporation, the holder of the visa may not work for any other person or corporation without obtaining his or its consent and the approval of the Naturalization and Immigration Department.

Article (12)

An alien entering the Country on a visa or entry permit shall leave the Country upon the expiry of his visa or entry permit whether through its cancellation or the expiry of its validity, unless he has obtained a permit to reside in the Country.

An alien who has been exempt from the condition of obtaining a visa or an entry permit pursuant to paragraph 2 of Article (2) of this Law shall leave the Country within a maximum period of thirty days from the date of his entry into the Country unless he has obtained a residence permit during that period.

CHAPTER THREENOTIFICATION OF COMPETENT AUTHORITIESArticle (13)

An alien entering the Country shall, within a maximum period of

one week of his entry, report at the Naturalization and Immigration Department or the Police Station of the area in which he is located and shall make a statement of his entry and give his particulars on the format prepared for this purpose, and shall, if he changes his place of residence, report his new address within one week from the date he changed it.

Article (14)

The managers of hotels and such like shall apprise the Naturalization and Immigration Department or the Police Station to which they are attached of the aliens staying in or leaving their hotels within forty eight hours of their check in or check out.

An individual harboring or putting up an alien shall report the name and address of the alien within forty eight hours from the time the alien took up the accommodation or left it.

The individuals mentioned under the previous two paragraphs shall report the aliens staying with them upon the operation of this Law within two weeks from the date it comes into force.

Article (15)

During their stay in the Country, aliens shall submit, whenever they are required to, their passports or travelling documents, reply to any queries put to them, and to report, upon request, at the Naturalization and Immigration Department or the Police Station at the appointed time.

In the event of the loss or destruction of the passport they shall apprise the said Department thereof within three days from the date of loss or destruction.

Article (16)

Any party employing an alien shall submit to the Naturalization and Immigration Department or the Police Station under whose circuit the place of work is located a declaration on the format prepared for that purpose within 48 hours from the time the alien joined its services, and shall, upon the termination of the alien services, submit a declaration thereof to the said Department or the Police Station within 48 hours from the time its relationship with the alien is severed.

CHAPTER FOUR
ALIENS' RESIDENCE

Article (17)

The Naturalization and Immigration Department shall be the competent body to issue a residence permit for the alien for a period not exceeding one year which may be renewed upon expiry. The Department shall mark the alien's passport or travelling document accordingly and shall issue a card in this respect.

In the event his residence card is lost, the alien shall inform the said Department thereof and of any changes in the particulars stated therein.

Article (18)

An alien entering the Country on a visit shall not be granted a residence permit except for serious reasons.

In such circumstances, the residence duration granted may not exceed the time required for the purpose for which it was granted.

Article (19)

An alien obtaining a residence permit shall be subject to the provisions of Article (11) of this Law.

And he shall leave the Country upon the cancellation or expiry of his residence permit.

CHAPTER FIVE
SUPERVISORY AUTHORITY

Article (20)

Without prejudice to any Bye-laws or Decisions issued by the Cabinet, the Minister of Interior may, for reasons relating to public interest, cancel at any time any visa, entry permit or residence permit prior to the expiry of its duration.

Article (21)

The local security authorities of the member Emirates and the Federal security authorities, each within its jurisdiction, shall be responsible for pursuing those violating the provisions of this Law, its Regulations and Bye-laws.

The Naturalization and Immigration Department shall notify the appropriate security authorities of the expiry or cancellation of any visa, entry permit or residence permit.

The security authorities shall observe the directives and orders issued to them by the said Department for the implementation of the provisions of this Law.

Article (22)

The security authorities of the member Emirates and the Federal

security authorities may, each within its jurisdiction, stop and search any ship if they had any reason to believe that it is transporting individuals who have committed a crime punishable under the provisions of this Law or they are trying to commit such crime and they may arrest such persons and ask the ship to enter the nearest port in the Country.

CHAPTER SIX
DEPORTATION OF ALIENS

Article (23)

The Minister of Interior may order the deportation of any alien in the following cases, even if he had a residence permit:

- (a) if the alien has been adjudicated and the court recommended in its judgement that he be deported.
- (b) if the alien lacked an apparent means of subsistence.
- (c) if the security authorities was of the opinion that the public interest, public security or general ethics require the deportation of the alien.

Article (24)

The deportation order of the alien may include the alien members of his family for whose subsistence he is responsible.

Article (25)

The Minister of Interior may detain an alien against whom a deportation order has been issued, for a period not exceeding two weeks, if such detention was requisite for the execution of the deportation order.

Article (26)

The Minister of Interior may order that the cost of deportation and expulsion of the alien and his family from the Country shall be borne by the alien if he has money or shall be at the expense of the country whose nationality he holds, otherwise, the Ministry shall bear the cost of deportation and expulsion.

Article (27)

If the alien against whom a deportation or an expulsion order has been issued has interests in the Country requiring liquidation, he shall be given a respite for their liquidation following the submission by him of a guarantee. The Ministry of Interior shall define the length of such respite providing it does not exceed three months.

Article (28)

An alien who has been expelled may not return to the Country except by a special permission from the Minister of Interior.

Article (29)

An alien not having a residence permit or whose residence permit has expired shall be expelled from the Country by order from the Naturalization and Immigration Department. He may return to the Country upon satisfaction of the necessary conditions of entry in accordance with the provisions of the law.

CHAPTER SEVENPENALTIESArticle (30)

In the event an alien arrives in the Country by any means of

transportation in contravention of the provisions of Articles (2) and (7) of this Law, the Naturalization and Immigration Department may order his repatriation and instruct the commander of the means of transport on which he arrived or the commander of any other means of transport belonging to the same owner to take the said alien out of the Country. The owner of the means of transport shall bear the repatriation expenses.

Any commander of a means of transport not complying with the order issued to him in accordance with the provisions of the previous paragraph shall be punished by a fine not exceeding two thousand dirhams.

Article (31)

An alien entering the Country or staying therein in a manner contrary to the provisions of this Law or not complying with an order issued for his repatriation shall be punished by a maximum period of four months' imprisonment and by a maximum fine of two thousand dirhams or by either of these two penalties. The court shall order his deportation from the Country.

Article (32)

1. If a commander of any means of transport or the person in charge thereof brought or attempted to bring a person into the Country in a manner contrary to the provisions of the law he shall be punished by a maximum of one year's imprisonment and a maximum of five thousand dirham fine or by either of these two penalties, and the court shall order the deportation of the said alien and the confiscation of the said means of transport, unless it deemed otherwise for special reasons which it shall record in the judgement.

2. The commander of the means of transport or the person in charge thereof shall be exempt from the liability arising from the preceding paragraph if he substantiates that the means of transport was brought in or that his intention was to bring it in through the legally defined point and that he took or had the intention to take all the necessary measures to hand over the said alien travelling with him to the appropriate security authorities to verify his papers.
3. Any defence made by the commander of the means of transport or by the person in charge thereof alleging that he did not know of the presence of the said alien on the said means of transport or that he was unaware that he did not carry the proper papers entitling him to enter the Country licitly/lawfully, shall be disregarded.
4. In the implementation of the provisions of this Article, any person on a means of transport heading for the Country shall be considered that the commander of the means of transport was trying to bring him into the Country, unless such person substantiates otherwise.

Article (33)

Any person making a false statement for the purpose of dodging the provisions of this Law shall be punished by a maximum period of four months' imprisonment and by a maximum fine of two thousand dirhams or by either of these two penalties, and the court shall order the deportation of the said alien from the Country.

Article (34)

Any person forging a visa, an entry permit, a residence permit

or card or any other document with the intention to evade the provisions of this Law, or using any forged document of the same knowing that it is forged shall be punished by a maximum period of three years' imprisonment and by a maximum fine of ten thousand dirhams, or by either of these two penalties, and the court shall order the deportation of the said alien from the Country.

Article (35)

Apart from the punishments specified for the crimes referred to under this Chapter, an individual violating the provisions of this Law, its Regulations or Executive Bye-laws shall be punished by a maximum period of three months' imprisonment and by a maximum fine of one thousand dirhams, or by either of these two penalties.

Article (36)

A person who attempts to commit a crime punishable under this Law or who takes part therein by colluding or collaborating with, or abetting or instigating a third party to commit it shall be punished by the same penalty stipulated for the person committing the crime himself.

CHAPTER EIGHT EXCEPTIONS

Article (37)

The provisions of this Law shall not apply to:

- (a) Heads of state and members of their families.
- (b) Heads and members of the diplomatic and consular missions accredited to the State, and their families.

CONT'D.../...

Members of the foreign diplomatic and consular corps not accredited to the State, shall be treated on a reciprocal basis.

- (c) Holders of diplomatic passports provided a reciprocal arrangement exists.
- (d) The crew of the ships or aircraft coming into the Country holding sea or air tickets issued by the appropriate authorities to which they are attached.
- (e) Whomever the Minister of Interior deems to exclude by a special permission for considerations relating to comity of nations.
- (f) Those exempt under international treaties where the State is a party thereto, within the limits specified in such treaties.

CHAPTER NINE INTERIM AND CONCLUDING PROVISIONS

Article (38)

Without prejudice to the provisions of Article (29), the Ministry of Interior may, in co-ordination with the security authorities of the member Emirates, list the aliens residing in the Country without a residence permit to consider granting them a permit in accordance with the provisions of this Law.

The Minister of Interior may, by a decision issued by him, determine the rules and procedures to be followed in this respect.

Article (39)

Entry visas and residence permits issued by the appropriate

authorities of the member Emirates in the Federation prior to the operation of this Law shall remain valid until they are either cancelled in accordance with its provisions or until the expiry of their validity.

A certificate of no objection to granting a visa to enter the member Emirates of the Federation valid at the time of the operation of this Law shall be considered as an entry permit issued in accordance with the provisions of this Law.

Article (40)

The fees specified in the Schedule appended to this Law shall be collected for the account of the State according to the cases described in the Schedule.

Article (41)

The Naturalization and Immigration Departments of the member Emirates of the Federation shall be deemed as constituting branches of the Naturalization and Immigration Department of the Capital. The officers and employees of the said Departments shall be transferred to the said Department and the rules organizing such transfer shall be issued by a decision of the Minister of Interior.

Article (42)

The decision in respect of the crimes described under Article (34) of this Law shall fall under the jurisdiction of the Federal Supreme Court, and local judicial authorities of the member Emirates in the Federation shall be responsible, each within its powers, for deciding on the other crimes.

Article (43)

The Minister of Interior shall issue the Bye-laws, Decisions

and Formats required for the implementation of the provisions of this Law.

Article (44)

The ministers shall implement the provisions of this Law, each within his jurisdiction, and this Law shall be published in the Official Gazette and shall come into force one month after the date of its publication.

Zayed Bin Sultan Al Nahyan
President of the United Arab Emirates

Issued at the Presidential Palace in Abu Dhabi
On 25 Jumada Al Thani 1393 Hijri
25 July 1973 Anno Domini

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TRANSLATION

Certain Articles from
 FEDERAL LAW NO. (10) OF 1973
CONCERNING THE FEDERAL SUPREME COURT

WE ZAYED BIN SULTAN AL NAHYAN, President of the United Arab Emirates, having examined the Provisional Constitution and in view of the proposal of the Minister of Justice, the approval of the Cabinet and the Federal National Council and the sanctioning of the Federal Supreme Council;

HAVE PROMULGATED THE FOLLOWING LAW:

Part One
System and Formation of the Court

Article (1)

There shall be established in the United Arab Emirates a supreme court to be called the Federal Supreme Court, hereinafter referred to as the "Supreme Court".

The said Court shall constitute the supreme judicial authority in the Federation.

Article (2)

The seat of the Supreme Court shall be situate in the capital of the Federation, and it may convene its sessions, when necessary, in any of the capitals of the Federation member Emirates.

Article (3)

The Supreme Court shall comprise a president and four judges. In this Law, it shall be referred to its president as the Court President.

(**) The salary scale of the President of the Federal Supreme Court, its judges and the Federal Public Prosecution has been amended by Law No. (11) of 1977 published in No.52 of the Official Gazette.

Cont'd.../..

Judges on duty may be appointed in the Supreme Court, the number of which may not exceed three to form a quorum for the Court when necessary provided not more than one judge sits at any of the Court's chambers and none of them may preside the chamber.

With the exception of the provisions pertaining to the judges on duty, they shall be governed by the same regulations applying to the judges of the Supreme Court.

Article (4)

An individual vested with judiciary power at the Supreme Court shall satisfy the following conditions:

1. He shall be of UAE nationality and shall enjoy full civil capacity.
2. He shall not be less than thirty five calendar years of age.
3.
4.
5.

Part Four

Federal Public Prosecution

Article (35)

The Federation shall have an attorney general to be assisted by a sufficient number of advocates general, heads of the public prosecution, its attorneys and assistants.

Article (36)

The appointment of the attorney general and the other members of the Public Prosecution to the grade of prosecutor shall be effected by a decree issued by the President of the State following approval of the Cabinet upon the nomination of the Minister of Justice.

Cont'd../..

The appointment of the assistant public prosecution shall be effected by a decision of the Cabinet upon the nomination of the Minister of Justice for a period of one year under probation. In the event he completes the probationary period successfully, his post shall be confirmed by a decision of the Cabinet.

Article (37)

.....

Article (38)

The power of the attorney general shall encompass the total territorial jurisdiction of the Federation.

The determination of the area of jurisdiction of the members of the Public Prosecution and their domicile as well as their transfer and secondment shall be effected by a decision of the Minister of Justice upon the proposal of the attorney general.

Article (43)

The Public Prosecution shall exercise the powers vested in it under this Law and the other laws.

The members of the Public Prosecution shall be responsible to their superiors according to their grade order and shall depute the attorney general in the performance of their duties, and all of them shall be responsible to the Minister of Justice.

The Public Prosecution shall have the exclusive authority to set criminal actions in motion and to commence the same which may not be instituted by another party except in the cases described in the law.

Article (44)

The Public Prosecution shall undertake the interrogations and indictment in respect of the crimes falling under the jurisdiction of the Federal judiciary.

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Article (45)

The Public Prosecution may, by decision of the Minister of Justice upon the proposal of the attorney general and the approval of the authorities concerned with interrogation and indictment in the member Emirates of the Federation, exercise its powers in those Emirates.

Article (48)

Following his arrest, the accused may not be detained for more than forty eight hours. Nevertheless, the Public Prosecution may order, following the interrogation of the accused, to detain him provisionally pending interrogation for a period of seven days subject to renewal for further periods not exceeding fourteen days.

If, following the lapse of the periods referred to in the previous paragraph, it was established that the benefit of the interrogation required the detention of the accused to continue, the Public Prosecution shall lay the papers before the judge of the competent court for him to issue his order following the review of the papers and the hearing of the statements of the accused, to extend the detention for a period not exceeding thirty days, subject to renewal, or to release him on bail or without bail.

The accused may appeal to the Court President from the order issued in his absence following his detention within three days from the date of his being notified of the order or becoming aware thereof.

A person who is not charged may only be detained by order of the competent judge. The cases and procedures provided for under the first and second paragraphs of this Article shall apply in this respect.

Cont'd./..

- 2 -

Article (49)

The Public Prosecution may order the search of an accused of a crime arrested redhanded or of a crime which may warrant imprisonment. It may also order the search of his residence to confiscate the things and papers which could assist in revealing the truth whenever there are strong signs which indicate that he might hide such things on him or in his residence.

If it is established from the interrogation that a person who is not charged is connected with the crime, the Public Prosecution may only search him or his residence after obtaining a permission from the appropriate authorities in the Emirate concerned.

Article (54)

A person sustaining damage from the crime may constitute himself as plaintiff and claim for civil rights before the criminal department at the Supreme Court hearing the case at any of its stages so long the arguments have not ended and the case has not been adjourned for a judgement.

The claim may be raised by a petition notified to the Public Prosecution with a copy of the demands to enable it to undertake the criminal action before the Supreme Court. The claim may also be raised vide a motion submitted to the session held for hearing the action if the accused was present thereat, otherwise, the case shall be adjourned for the purpose of notifying the accused of the claimant's demands for the civil rights unless the criminal action has reached the stage for a decision to be issued thereon.

The plaintiff claiming for civil rights may sue the party responsible for such rights and implicate him in the case.

Cont'd../..

The party responsible for the civil rights may intervene in the lawsuit on its own volition at any stage of the action.

Article (55)

Without prejudice to the provisions of the preceding Article, the party sustaining damage from the crime may resort to the competent civil court to claim for compensation for the damage resulting from the crime. Once he has opted for this course of action, he may not resort to the penal department.

If the civil action is brought before the competent civil court in respect of the crime subject of the civil claim and the penal action had been put before the penal department of the Supreme Court, the civil court shall suspend the resolution of the civil action until the penal action is resolved.

TRANSLATION
 Certain Provisions of
FEDERAL LAW NO. (3) OF THE YEAR 1983
CONCERNING
FEDERAL JUDICIARY

WE ZAYED BIN SULTAN AL NAHYAN, the President of the United Arab Emirates, having examined:

- The Provisional Constitution;
- Federal Law No. (1) of 1972, concerning the Jurisdictions of the Ministries and the Powers of the Ministers, as amended;
- Federal Law No. (10) of 1973 concerning the Federal Supreme Court, as amended;
- Federal Law No. (6) of 1978 concerning the Setting Up of Federal Courts and the Transfer of the Jurisdictions of the Local Judicial Authorities of Certain Emirates to Them;
- Federal Law No. (17) of 1978 concerning the Organization of the Cases and Procedures of Objections for Cassations Before the Federal Supreme Court;
- Cabinet Decision No. (2) of 1973 concerning the Organization of the Ministry of Justice;

And in view of the proposal submitted by the Minister of Justice, Islamic Affairs and Awqaf and the approval of the Cabinet and the Federal National Council and the sanctioning of the Federal Supreme Council thereof;

HAVE ISSUED THE FOLLOWING LAW:

Cont'd../..

PART ONE

Independency of Judiciary
And Setting up of a Supreme Council
For the Federal Courts

Article (1)

Sovereignty shall be based on justice and the judges shall be independent having no dominant control over them in the performance of their duties other than the provisions of the Islamic Doctrine, the laws in force and their conscience. No individual or authority may violate the independency of the judicial authorities or interfere in matters of justice.

The Federal Judiciary shall comprise the Federal Courts and the Federal Public Prosecution.

PART TWO

Immunity of the Judges and the Reasons
for Which Their Term of Office May be Terminated

Article (31)

The judges may not be dismissed and their term of office may only be terminated for one of the following reasons:

1. Death.
2. Resignation.
3. The expiry of contract duration of those on contract or the expiry of the secondment duration of those seconded. The Government's determination of the contract or secondment prior to the expiry of the term shall be effected in accordance with the regulations in force by a decision of the Cabinet.
4. When the judge reaches the pension age.
5. If it is established that the judge is no longer capable of performing his duties for health reasons; the disability

-3-

shall be ascertained by a decision of the competent medical body.

6. If the judge is dismissed for disciplinary grounds for the reasons and in accordance with the procedures provided for under this Law.
7. If the judge is entrusted with another non-judicial post with his consent or by virtue of the verdict of the disciplinary council.

PART FOUR

Public Prosecution

Chapter One

General Provisions

Article (55)

The public prosecution shall exercise the powers determined for it by law and it shall be vested with the exclusive power to set a criminal action in motion, unless the law stipulates otherwise.

Nevertheless, the public prosecution shall be compelled to institute a criminal action should the party concerned personally constitute himself as plaintiff in accordance with the stipulations described in the law.

Article (56)

The function of the public prosecution shall be exercised before the Federal Courts by an attorney general to be assisted by a chief advocate general, a sufficient number of advocates general, heads of the public prosecution, its attorneys and assistants.

Cont'd.../..

In the absence of the attorney general or if his post is vacant or in the event of any matter impeding him, he shall be replaced by the chief attorney general followed by the most senior member of the public prosecution who shall enjoy all the powers vested in the attorney general.

Article (68)

Members of the public prosecution may not be dismissed.

Their services may only be terminated for one of the reasons described under Article (31) of this Law and in accordance with its stipulations.

BCCI auditors face biggest-ever enquiry

By Richard Newton

The Joint Disciplinary Scheme enquiry into the Bank of Credit & Commerce International scandal is set to be the largest investigation ever mounted into any professional firm. And it is certain to question a number of current and former partners among the bank's former auditors, Price Waterhouse and Ernst & Young.

Whilst the three-man committee of enquiry has yet to determine the main areas of its investigation, the performance of the auditors is bound to come under scrutiny.

This will include the relationship between PW and E&Y, who audited separate

parts of the BCCI group up until 1987, and the question of whether that contributed to the situation which allowed the fraud to take place.

The JDS is also likely to examine the potential conflict of interest that faced PW's lead partner on the audit, Christopher Cowan, who performed four major roles at the bank. In addition to being the audit engagement partner, he advised on the bank's internal investigation committee, was in charge of its reconstruction plans, and was the reporting accountant on BCCI for the Bank of England and for the college of regulators.

The committee, headed by Sir John Bailey, the former

Whitehall mandarin, will have to consider whether the auditors were satisfied that they could rely on the information they had access to - especially in the bank's controversial treasury function - in making their reports.

Others likely to be considered by the JDS include PW audit partner Tim Hoult and Ernst & Young partners Terry Stone and Robin Heath, all of whom played central roles in auditing BCCI.

A PW spokesperson said: 'We will be cooperating fully and will rather like telling our side of the story.'

The enquiry, however, is likely to be stymied by banking secrecy laws.

811

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July 8, 1992

BY HAND

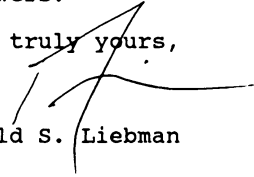
Senator John F. Kerry
United States Senate
Committee on Foreign Relations
Washington, D.C. 20510-6225

Re: Ahmed Al Sayegh

Dear Senator Kerry:

I am enclosing Mr. Al Sayegh's responses to the 65 questions that were sent to us by the Subcommittee staff on May 20, 1992, along with a cover letter from Mr. Al Sayegh expressing his disappointment that he was unable to arrange a personal meeting with you to deliver his answers.

Very truly yours,


Ronald S. Liebman

RSL:sla

cc: Jonathan Winer
Ahmed Al Sayegh

July 8, 1992

BY HAND

Senator John F. Kerry
United States Senate
Committee on Foreign Relations
Washington, D.C. 20510-6225

Re: Answers to 65 Questions

Dear Senator Kerry:

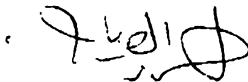
On June 22, 1992, I wrote to you to express my concern about the nature and tone of the questions that were sent to me by the Sub-Committee's staff after the May 14, 1992 hearing. Because of my concern, I offered to make a special trip to Washington in order to deliver my answers to you in person and to gain an understanding as to the reasons why the nature and tone of the questions I received were so different from those that you had posed to me during the May 14 hearing.

On the day I wrote to you, my counsel received a call from Mr. Winer of the Sub-committee's staff. Mr. Winer indicated that he was unsure if you would be available to meet me. On June 23, 1992, we received a letter from Mr. Winer stating that you preferred to postpone a meeting until after my answers were received. The following day, my counsel wrote to Mr. Winer, on my behalf, to reiterate my request to meet with you.

I am disappointed that I did not receive a reply, and that the meeting I had requested could not be arranged despite my willingness to travel to Washington exclusively for that purpose.

The points I would have made at that meeting are therefore included with my answers to the questions raised by the Sub-Committee's staff.

Very truly yours,



Ahmed Al Sayegh

cc: Ronald S. Liebman Esq.
Jonathan Winer Esq.

**RESPONSES OF AHMED AL SAYEGH TO WRITTEN QUESTIONS
FROM U.S. SENATE SUBCOMMITTEE ON TERRORISM, NARCOTICS
AND INTERNATIONAL RELATIONS**

INTRODUCTORY STATEMENT

On May 14, 1992, I appeared before the Subcommittee, as a spokesman for the BCCI Majority Shareholders, to answer the Subcommittee's questions relating to BCCI and CCAH and to emphasize the Majority Shareholders' desire to cooperate with various ongoing U.S. investigations of these matters, including investigations of the Subcommittee.

During the hearing, I answered all of the Subcommittee's questions to the best of my ability and it appeared to me that the Subcommittee was fully satisfied with the answers I provided. I had travelled from Abu Dhabi to Washington for the sole purpose of attending the hearing and was prepared to stay as long as necessary to answer the Subcommittee's questions. However, late in the afternoon, the Chairman of the Subcommittee advised me that the Subcommittee wished to hear testimony from officials of the Department of Justice, and asked whether the Subcommittee could submit some questions in writing to me in lieu of completing their oral questioning. He asked when I was leaving to return to Abu Dhabi, indicating that the Subcommittee intended to present me with a few questions that I would be able to answer before I departed. I agreed that I would be willing to answer the written questions rather than concluding my testimony that afternoon.

I remained in Washington the following day, but did not receive the Subcommittee's questions as expected. Accordingly, I returned to Abu Dhabi. Six days after the hearing, the Subcommittee's staff sent a list of 65 questions, some of which were subdivided into numerous subparts. I was quite surprised at the number of questions, the nature of questions and the tone of the questions, which seemed to me to be totally contrary to the tone and nature of the questions I had been asked at the hearing, and also contrary to my understanding with the Subcommittee about the questions I was to receive before I returned to Abu Dhabi.

In particular:

- (a) The questions were far more numerous than what I had expected from the Chairman's request, and I clearly could not have answered these questions before I returned to Abu Dhabi even if the questions had been submitted in a timely fashion.
- (b) Many of the questions asked for copies of documents or extremely detailed explanations of a nature that I could not have provided if the questions had been posed orally at the May 14 hearing.
- (c) A number of the questions inquired into my own personal affairs and the personal affairs of the Majority Shareholders or their representatives including several that had no relation whatsoever to matters involving BCCI and CCAH.

- (d) Several questions seemed to require me to draw legal conclusions, which I am not qualified to do since I am not a lawyer.
- (e) Questions were asked that already had been asked and fully answered at the hearing.
- (f) A number of the questions contained factual allegations that are baseless and seem designed to embarrass the Majority Shareholders and their representatives.

My concern about the nature and tone of these questions was so great that I wrote to the Chairman of the Subcommittee and offered again to travel from Abu Dhabi to Washington, D.C. in order to meet him to deliver my written answers personally and gain a better understanding of why the questions I had received from the Subcommittee staff were so different from those that were posed to me at the hearing and that I had expected to receive based on the Chairman's request at the close of my oral testimony. Despite my willingness to travel from Abu Dhabi for this purpose, I was advised by the Subcommittee's staff that the Chairman would be unavailable.

Despite all of the foregoing, I wish to reiterate the Majority Shareholders' desire to cooperate with the ongoing investigations into BCCI and CCAH, in a manner consistent with their sovereign status. In this spirit, I provide below my responses to the 65 questions that were posed to me by the Subcommittee staff. I have endeavored to provide at least the

level of detail that I could have provided at the May 14 hearing, and in numerous instances I have attempted to gather and provide information that goes beyond what would have been available to me had these questions been posed on May 14.

I provide this information in the spirit of cooperation, but wish to reiterate my surprise and disappointment at the approach that was taken by the Subcommittee staff following what I had felt was a very constructive hearing.

RESPONSES TO QUESTIONS

Background

1. What is your educational background?

Answer: I have a B.S. in Economics.

2. What businesses do you own or control? Please identify by name, type of business, and net assets.

Answer: As mentioned in my opening statement, I am a director of the Abu Dhabi National Oil Company. I do not believe that a more detailed accounting of my private affairs is relevant to the Subcommittee's inquiries, but I have no other business interests.

3. When were you appointed to a position on the Shareholders Working Group?

Answer: In July 1991, after the closure of BCCI.

4. Who else serves on the Group?

Answer: In addition to myself, there are six other members of the Shareholders Working Group:

H.E. Ghanim Faris Al Mazrui
H.E. Yousef Omeir Bin Yousef
H.E. Jauan Salem Al Dhaheri
H.E. Sultan Nasser Al Suweidi
Khalifa Nasser Al Mansoori
Mekki Mahmoud Ahmed

5. Who chairs the Group?

Answer: H.E. Ghanim Faris Al Mazrui.

ADIA

6. In page one of your testimony, you state that each of the Majority Shareholders is a sovereign entity or person. Is ADIA claiming sovereign immunity in the United States?

Answer: ADIA certainly is a foreign sovereign as that term is defined in the Foreign Sovereign Immunities Act and under general principles of international law. Whether or not ADIA or the other Majority Shareholders claim sovereign immunity depends upon the context in which the issue arises and the relevant facts and circumstances.

7. Are any of the majority shareholders claiming sovereign immunity? If so, please specify.

Answer: Each of the Majority Shareholders is a foreign sovereign or a sovereign head of state entitled to various immunities under U.S. and international law. Whether such immunities are asserted in a given instance depends on the context in which the issue arises. My appearance before the Subcommittee demonstrates the Majority Shareholders' desire to cooperate with U.S. authorities, but in a manner consistent with their sovereign status.

8. Was ADIA created by the decree of Sheikh Zayed? Please specify when ADIA was created, and provide a copy of any charter or declaration pertaining to its creation.

Answer: No. ADIA was created in 1976 pursuant to a law promulgated by the Government of Abu Dhabi.

9. On Page 4, you testify that Abedi persuaded the Abu Dhabi Investment Authority to purchase a 10 percent stake in BCCI in 1981.

A. Did Abedi ever play any role in the financial affairs of ADIA? If so, please specify, including in your answer whether any of the majority shareholders ever entrusted funds to Abedi, the amounts of funds, the dates placed, and the name, location, and the number of each account in which such funds were placed with Abedi.

Answer: Agha Hasan Abedi played no role in the financial affairs of ADIA.

- B. Did Abedi have the power of attorney for ADIA or any member of the royal family? If so, please specify.

Answer: Between 1980 and 1990, Abedi was given power of attorney to establish and manage an investment portfolio belonging to Their Highnesses, Sheikh Zayed bin Sultan Al Nahyan and Sheikh Khalifa bin Zayed Al Nahyan. The power of attorney authorized Abedi to purchase securities for investment. Abedi had no power of attorney for ADIA.

- C. Was Abedi ever authorized to engage in any other type of stock transactions on behalf of ADIA or any member of the royal family? If so, please specify.

Answer: Not to my knowledge.

10. Was ADIA involved in a proposed "no risk" BCCI share transaction in 1981? If so, please specify.

Answer: Not to my knowledge. However, ADIA purchased shares in 1981 and received a promise that BCCI would repurchase the shares after three years if ADIA elected to sell. ADIA did not resell its shares.

11. It appears that ADIA provided a \$500 million loan in 1988 to finance the buy-back of BCCI shares from Sheikh Khalid bin Mahfouz. Who at ADIA authorized the loan? Why did ADIA make the loan? Was the loan disclosed to U.S. regulators? Was the deal structured in order to obviate the need for disclosure?

Answer: I am not aware of the details of this loan. However, I know of no reason why ADIA would be required to disclose its loans to U.S. regulators.

ICIC

12. Did any of the majority shareholders ever invest in ICIC? If so, please specify the dates of any such investments, the amounts invested, and the purpose of investing such amounts in ICIC.

Answer: Not to my knowledge.

13. Did any of the majority shareholders ever place or deposit assets in ICIC? If so, please specify the dates of any such placements or deposits, the amounts placed or deposited, and the purpose of placing or depositing such amounts in ICIC.

Answer: In excess of \$2 billion was entrusted to Abedi and Naqvi for investment by Their Highnesses Sheikh Zayed and Sheikh Khalifa under a power of attorney between 1980 and 1990. These funds were deposited temporarily in ICIC Overseas before being invested.

14. Were funds deposited in Account No. 20071 at ICIC Overseas, also known as the Portfolio account, funds belonging to Sheikh Zayed and his family? If so, please specify the size the account [sic] at its largest, and the size of the account as of July 5, 1991. Were records kept of the account? Do you have them? Will you provide access to those records? To the extent the Portfolio account was beneficially owned by any member of the Abu Dhabi royal family, please specify who managed the account for Abu Dhabi at BCCI, who in Abu Dhabi was responsible for the account, provide the date of the account's establishment.

Answer: I do not think it is appropriate to provide details of the personal, private affairs of His Highness Sheikh Zayed to the Subcommittee, nor am I privy to them. However, to assist the Subcommittee, I am able to say that funds deposited in Account No. 20071 at ICIC Overseas were Ruling Family funds, to be invested by Abedi and Naqvi pursuant to powers of attorney.

In excess of \$2.2 billion was misappropriated from the portfolio without the knowledge of the Ruling Family. False account statements were provided to the Department of Private Affairs to mislead it into believing that the Ruling Family's assets were intact.

15. Were any BCCI officials granted powers of attorney to operate the Portfolio account on behalf of Abu Dhabi? If so, please provide copies of the powers of attorney, including the dates the powers were granted, and identify the person granting them.

Answer: See answer to question 9.B. Swaleh Naqvi was given a power of attorney similar to that of Abedi described in the answer to question 9.B.

16. Did any of the majority shareholders ever take loans from ICIC? If so, please specify the dates of any such loans, the amounts loaned, and the purpose of such loans from ICIC.

Answer: I am not aware of any loans by ICIC to the Majority Shareholders.

17. Was Abedi ever authorized to buy or sell shares of stock in ICIC on behalf of ADIA or any member of the royal family?

Answer: To the best of my knowledge and as I previously stated, neither ADIA nor the Ruling Family ever held stock in ICIC.

18. Does the Abu Dhabi government have any potential claims against the ICIC Group? If so, please identify any such claims, including but not limited to tracing and trust claims against ICIC Overseas, ICIC Investments, and other ICIC group companies.

Answer: Yes, the Ruling Family has very substantial claims against the ICIC Group. If the settlement agreement between the Majority Shareholders and the court-appointed liquidators is approved, certain claims will be released; if not, they will be pursued. The details of the Majority Shareholders' intentions regarding the claims are subject to legal privilege and cannot be disclosed.

Ownership of First American by Abu Dhabi Government

19. What were the circumstances that lead Abu Dhabi to acquire an interest in the First American Banks when it was known as Financial General Bankshares in December 1977 and January 1978?

Answer: Abu Dhabi did not acquire any interest in Financial General Bankshares in 1977 or 1978. Sheikh Sultan bin Zayed Al Nahyan and Abdulla Darwish (on behalf of Sheikh Mohammed bin Zayed Al Nahyan) each acquired an interest in Financial General Bankshares in the relevant time period. Agha Hasan Abedi solicited these investments, which were intended to be passive investments in a bank with high growth potential.

20. Did Sheikh Zayed instruct Abedi to purchase shares on his behalf of Financial General in 1978?

Answer: No.

21. The initial shareholders of CCAH were Sheikh Kamal Adham, Faisal Saud Al Fulaij, and Abdullah Darwaish on behalf of Sheikh Mohammed bin Zayed of Abu Dhabi, and they remained the shareholders until February, 1982. Was the CCAH acquisition originally a partnership involving Adham, Fulaij and Abu Dhabi? What were the terms of the original involvement of members of the majority shareholders?

Answer: Abu Dhabi has never entered into a partnership of any kind with Sheikh Kamal Adham and Faisal Al Fulaij and certainly has never done so in connection with the acquisition of CCAH. I am not aware of any special terms of involvement for those of the Majority Shareholders who held FGB or CCAH shares.

22. In the original Financial General takeover attempt, did representatives of the majority shareholders understand Adham and Fulaij to be at risk, or acting on behalf of somebody else?

Answer: See pages 217-218 of the May 14, 1992 hearing transcript where this question is asked and answered.

23. In March 1982, the Abu Dhabi Investment Authority (ADIA) took a bridge loan of \$14 million from BCCI (Overseas) to purchase its 8,240 shares of CCAH. Did ADIA borrow money from BCCI to purchase ADIA's shares in First American?

Answer: After ADIA had agreed in principle to become an investor in CCAH, BCCI, without ADIA's prior knowledge, created and funded a loan for the purpose of acquiring the initial shares. At the time, ADIA had substantial funds on deposit with BCCI, and instructed BCCI to discharge the loan from the funds on deposit. ADIA never held any shares in First American.

24. Sheik Khalifa and Sheik Mohammed of Abu Dhabi both became shareholders of Financial General as part of the takeover of First American? Who advised them of this investment? Why did they decide to participate in it?

Answer: Sheikh Khalifa bin Zayed Al Nahyan was never a shareholder of Financial General. He acquired shares in CCAH only after its successful tender offer for Financial General. So far as this question relates to Sheikh Mohammed bin Zayed al Nahyan, please refer to the answer given to question 19.

25. Bert Lance testified that he discussed the FGB purchase with Sheikh Zayed in 1978, and that Sheikh Zayed felt that the United States was not paying enough attention to the Gulf States and to Abu Dhabi, and that his investing in a U.S. bank could strengthen U.S.-Arab ties. Was a desire to acquire influence in the United States a factor in the purchase by Sheikh Zayed of shares in Financial General Bankshares?

Answer: The suggestion that Sheikh Zayed purchased shares in Financial General Bankshares to acquire influence in the United States suggests improper motives on his part. Not only, as already noted, did he never purchase FGB shares, but the suggestion of improper motive is vehemently denied. The shares that were purchased for Sheikh Sultan and Sheikh Mohammed were solely intended as a passive commercial investment, not to acquire influence in the United States. Also, I am advised that Mr. Lance never testified that Sheikh Zayed felt that investing in a U.S. bank could strengthen U.S.-Arab ties.

26. Have there ever been any person to person communications between Sheikh Zayed and Ghaith Pharoan [sic] about Pharoan's role in BCCI? If so, please specify the substance of any such communications.

Answer: To the best of my knowledge, there were no such communications.

27. Have there ever been any person to person communications between Sheik Zayed and Kamal Adham about Adham's role in BCCI? If so, please specify the substance of any such communications.

Answer: To the best of my knowledge, there were no such communications.

Abu Dhabi Government and BCCI

28. Annex One to your testimony set forth Abu Dhabi holdings of BCCI, but did not including [sic] a category specifically describing capital paid-in by the Abu Dhabi shareholders at each time. Please provide the actual date of each infusion of capital to BCCI paid in by any of the majority shareholders, and the amount paid in.

Answer: I am not certain I understand the reference in this question to "capital paid-in by the Abu Dhabi shareholders at each time," since Annex One shows that many of the Majority Shareholders' share purchases were from third parties, rather than purchases of newly-issues stock, and other stock acquisitions came in the form of dividends. In any event, I am unaware of the details of amounts paid for shares in particular transactions, except that I am aware that \$1.2 billion was injected into BCCI in April 1990 in an effort to save the bank.

29. You testified that Abu Dhabi was the biggest victim of BCCI's frauds, and lost \$6 billion. Please detail those losses by date, type, location, and amount.

Answer: The Majority Shareholders losses included, among other things, funds subject to power of attorney that were misappropriated, their equity investment in BCCI, amounts on deposit at BCCI, and interest on the above. These amounts were irretrievably lost when BCCI was closed on July 5, 1991.

30. The Subcommittee has learned that a meeting took place between Mr. Abedi, Mr. Naqvi, and Sheik Khalifa in March, 1990. Please specify what took place in that meeting, including the substance of what was communicated by Mr. Abedi and Mr. Naqvi to Sheik Khalifa at that time.

Answer: I am not aware of any meetings which took place in March 1990 between Mr. Abedi, Mr. Naqvi and His Highness the Crown Prince.

31. In the draft Section 41 report, it is stated that Mr. Al Mazrui and other representatives of the Abu Dhabi government were briefed on BCCI's problems in April, 1990. Please specify what took place in that meeting, including the substance of what was communicated to the representatives of the Abu Dhabi government at that time.

Answer: BCCI officers met with Abu Dhabi Government officials several times in April 1990 in an effort to persuade the Government to make a substantial capital injection into the bank. BCCI's officers confirmed that the bank was experiencing severe financial difficulties and disclosed the misuse of \$2.2 billion of managed funds held on behalf of the Ruling Family. Nevertheless, BCCI's officers claimed that a capital injection could restore the bank to profitability and financial health and allow the Majority Shareholders to recoup their investment over time.

32. Why did the majority shareholders fire Clifford and Altman as BCCI's U.S. lawyers in November, 1990?

Answer: BCCI had a number of U.S. lawyers, but Clifford and Altman fulfilled a supervisory role in addition to handling some matters directly. Since Clifford and Altman had worked closely with Abedi and Naqvi, who by November 1990 had been discredited, it seemed prudent for another law firm to replace Clifford and Altman as U.S. general counsel.

Mr. Mazrui

33. What position did Mr. Al Mazrui have at Sheik Zayed's Department of Private Affairs? Please specify the dates during which he held this position. Please specify all positions held by Mr. Al Mazrui on behalf of any of the majority shareholders, and the relevant dates for each such position.

Answer: Mr. Mazrui has been the Chairman (or Acting Chairman) of the Private Department of H.H. Sheikh Zayed bin Sultan Al Nahyan since 1982 and has been Secretary General of ADIA since 1976. Mr. Mazrui is also currently Chairman of the Shareholders Working Group, an informal committee appointed to oversee and coordinate the Majority Shareholders' response to the closure of BCCI, a position which he has held since July, 1991.

34. Did Mr. Al Mazrui receive financial benefits in connection with the purchase of BCCI shares? If he had, would his having done so violated any statute or custom in your country? If he has done so, please specify the amount and dates of each such payment, and the purpose of each such payment.

Answer: I am not privy to the details of Mr. Mazrui's own private affairs.

35. When did Mr. Al Mazrui first learn of fraud involving BCCI, and under what circumstances?

Answer: See Response to No. 31. It should also be pointed out that on April 18, 1990 Price Waterhouse reported "false or deceitful" accounting practices in a report to the BCCI Board of Directors (including Mr. Mazrui) that was given to the Bank of England and other regulators.

Promissory Notes

36. Please identify all promissory notes issued by the Government of Abu Dhabi to BCCI SA and BCCI Overseas, including the dates of each such note, the terms, the amounts, and the purpose.

Answer: As part of a plan approved by the Bank of England and other regulatory authorities to provide financial assistance urgently needed by BCCI to remedy financial deficiencies that had been uncovered by BCCI's Investigating Committee, arrangements were negotiated which would have involved the issue of promissory notes to BCCI S.A. and BCCI Overseas in amounts equal to the book value of loans which would have been transferred from those institutions to Financial Measures (Cayman) Ltd. and Financial Portfolio (Cayman) Ltd., two of three loan recovery vehicles

which would have been established under the recapitalization plan. Notes of UAE Dirhams 1,313,646,984 and US \$737,361,000 were to be issued to BCCI S.A., and notes of UAE Dirhams 2,358,353,016 and US \$1,323,770,000 were to be issued to BCCI Overseas. The notes would have been payable over seven and one half years.

Financial Measures (Cayman) Ltd.

37. Is Financial Measures owned in whole or in part by the Government of Abu Dhabi? If so, please specify any interest the Abu Dhabi government may have, including capital contributions, the date of such contributions, and the identity of each shareholder.

Answer: Financial Measures (Cayman) Ltd. is ultimately owned by the Government of Abu Dhabi.

38. Please identify any loans involving Financial Measures, BCCI, and the Government of Abu Dhabi, including the dates of any loans, the amounts, the terms, the parties, and the purpose.

Answer: To my knowledge, there are no loans involving Financial Measures (Cayman) Ltd., BCCI, and the Government of Abu Dhabi.

Financial Controls (Cayman) Ltd.

39. Do any of the majority shareholders have an interest in Financial Controls? If so, please identify any interest they may have, including capital contributions, the date of such contributions, and the identity of each shareholder.

Answer: No.

40. Please identify any loans involving Financial Controls, BCCI, and the Government of Abu Dhabi, including the dates of any loans, the amounts, the terms, the parties, and the purpose.

Answer: Under the arrangements referred to in the response to question 37, BCCI S.A. was to have provided a loan account of US \$170,288,000 to Financial Controls (Cayman) Ltd., which would have been the third loan recovery vehicle established under the recapitalization plan. This amount equalled the book value of loans which would have been transferred from BCCI S.A. to Financial Controls. The Government of Abu Dhabi would have guaranteed repayment of the loan account up to US \$59,468,000.

Through similar agreements BCCI Overseas was to have provided a loan account of US \$845,438,000 to Financial Controls. This amount equalled the book value of loans which would have been transferred from BCCI Overseas to Financial Controls. The Government of Abu Dhabi would have guaranteed repayment of the loan up to US \$690,532,000.

Trading of Promissory Notes

41. Did ADIA and/or BCCI enter into any transactions involving promissory notes from the Government of Abu Dhabi to BCCI? If so, please specify any such trades, including the dates of each such trade, the amounts traded, the terms, and the purpose of the trades.

Answer: See response to question 36.

Seizure of Promissory Notes

42. On July 16, 1991, the Government of Abu Dhabi filed an action with the Abu Dhabi Civil Court imposing preventative reservation on the outstanding promissory notes, and the notes that had been traded. These notes were then seized. Who has custody of the notes today? What were the reasons for the application to the civil court? Please provide a copy of the document setting out the Government of Abu Dhabi's complaint to the civil court in connection with the notes.

Answer: The Majority Shareholders are not in a position to provide details or court papers on this matter because the matter is sub judice and because of the in camera nature of the proceedings.

Cooperation and BCCI Documents and Witnesses

43. Please specify each time the Justice Department or New York District Attorney made any request for cooperation from you, including the dates of each request, the nature of the cooperation requested, and the response from Abu Dhabi.

Answer: The Justice Department and the New York District Attorney's Office have contacted the Majority Shareholders or their counsel on several occasions to request assistance in U.S. investigations, including access to documents and witnesses. The mutual cooperation program now under discussion should address these requests, and similar requests by the Majority Shareholders for information held by U.S. authorities.

44. You testified that Abu Dhabi intended to conclude a cooperation agreement with U.S. law enforcement [sic] soon. Please specify the terms which Abu Dhabi requires in order to conclude a cooperation agreement. Are you seeking guarantees of no prosecution against anyone, and if so, whom?

Answer: I do not believe it to be appropriate to discuss the details of the cooperation program, other than to say that we believe that the U.S. authorities will be fully satisfied.

45. Who has physical custody of the BCCI documents in Abu Dhabi?

Answer: Please see pages 27-28 of the May 14, 1992 written submission to the Subcommittee.

46. Who has physical custody of persons held in Abu Dhabi in connection with the BCCI affair? Please identify each such person by name, former title at BCCI if any, or other relation to BCCI. Which of these persons are potential defendants, and which are material witnesses.

Answer: The following individuals have all been preliminarily charged with fraudulent activities relating to BCCI: Imtiaz Ahmed, Abdul Hafeez, Mohammed Azmatullah, Nadim Habibullah, Zafar Iqbal Chaudhri, Hassan Mahmood Kazmi, Sohail Alam Kizilbash, Askari Hasan Khan, Babar Sayeed Khan, Mohammed Abdul Mujeeb, Syed Arjmand Ahmed Naqvi, Mohammed Swaleh Naqvi, Qaiser Raza Abid Raza, Iqbal Ahmed Rizvi, Naseem Al Hassan Sheikh, Ameer Al-Haqq Siddiki, Saleem Siddiqui, and Bashir Ahmed Tahir.

At the request of the Federal Prosecutor, the criminal court ordered that the detainees be held under the custody of the Federal Police. We are advised that releasing the titles of these persons is precluded because of the in camera nature of the proceedings.

47. Are the proceedings against BCCI officials being held in Abu Dhabi being conducted pursuant to the law of the UAE, the law of Abu Dhabi, or both? Please provide copies of any criminal statutes under which the BCCI officials are being prosecuted.

Answer: As noted in the May 14, 1992 written statement of the BCCI Majority Shareholders to the Subcommittee at page 25, the proceedings against the detainees are being conducted pursuant to U.A.E. federal law. The Majority Shareholders, as criminal complainants, have alleged specific violations of the U.A.E. Penal Code in their complaint submitted to the Federal Prosecutor. Because of the Federal Prosecutor's order that all papers and proceedings be held in in camera, the Majority Shareholders are not at liberty to provide a copy of the complaint to the Subcommittee.

48. Please describe the conditions of confinement of these officers. Are they being held in a prison, hotel, club, or other facility? Are any of them providing assistance to Abu Dhabi in unraveling the BCCI affair, if so, please specify the type of assistance and identify each such officer.

Answer: I do not believe the conditions under which these individuals are held in confinement is an appropriate issue for the Subcommittee to be concerned with. None of the detainees is a U.S. citizen and in any event, the conditions under which

detainees are confined is a matter for the sovereign detaining authority. It seems to me that it would be for the relevant prosecuting authority (the Federal Prosecutor in the UAE) to provide you with information regarding the conditions of confinement. So far as I am aware, none of the persons detained has provided affirmative or willing assistance to U.A.E. prosecutorial authorities.

49. Please specify the background of the special prosecutor appointed in Abu Dhabi, including his education and training.
50. What kind of resources are available to the special prosecutor. How big is his staff? How many investigators has Abu Dhabi assigned to BCCI? How many lawyers? What is the governing relevant law?
51. What are the statutes of limitations on the crimes the Abu Dhabi prosecutor is investigating? How long does his appointment last? When will it end?

Answer: Questions 49, 50 and 51 raise technical questions regarding Abu Dhabi law and practice. I think that the proper bodies to respond to these questions are the Ministry of Justice and the Federal Prosecutor's Office in Abu Dhabi. I would, however, mention that there is no "special prosecutor" appointed -- I understand that the Federal Prosecutor's Office is handling the matter. I understand that there are no time limitations applicable to UAE prosecutions for fraudulent activity.

52. The bulk of Abu Dhabi's losses were in dollar deposits in New York. Has the special prosecutor sought information from U.S. law enforcement, the Grand Caymans, or Luxembourg, pertaining to these losses? If so, please specify the dates of each such request.

Answer: The premise that the bulk of Abu Dhabi's losses were in dollar deposits in New York is not correct. I am not aware of what requests the U.A.E. federal prosecutor may have made for information from other countries. As previously noted, the Majority Shareholders (as distinct from the federal prosecutor) are discussing information that U.S. authorities can provide as part of their mutual cooperation program.

53. Has the State Department made any requests to Abu Dhabi in connection with the BCCI affair, including requests for the deportation of any BCCI officers for the purpose of prosecution by law enforcement in the United States? If so, please specify.

Answer: I would have expected that any communications from the State Department would have been directed to the Foreign Ministry of the United Arab Emirates.

Lawsuits against Accountants, Lawyers and Insiders

54. The agreement between BCCI and Abu Dhabi gives Abu Dhabi the sole right to decide whether or not to maintain lawsuits against BCCI's accountants, lawyers and insiders. Why did Abu Dhabi reserve the sole right to decide this issue to itself, instead of sharing it with the liquidators, as it shares other legal rights under the Agreement?

Answer: Under the agreement with BCCI's liquidators, the Majority Shareholders have not retained the sole right to decide to bring or maintain suit as to any potential defendant. Both

the Majority Shareholders and the liquidators have rights in relation to litigation to be initiated based on consideration of the likely merits of the case, the likely recovery, and other factors.

55. Does Abu Dhabi intend to litigate claims against BCCI's former accountants, lawyers and insiders? On what grounds? What damages are being sought?

Answer: Decisions about when and against whom to litigate will be made in accordance with the considerations noted above; those decisions are subject to legal privilege and are obviously not appropriate topics for public comment. The liquidators for BCCI already have brought suit against Price Waterhouse and Ernst & Young.

Indemnification

56. Price Waterhouse states in its testimony before the House of Commons that the Government of Abu Dhabi had given a commitment to indemnify BCCI against loss either by taking over balances at no loss to BCCI or by contributing equivalent funds to make good any losses incurred on the loans and advances in question. Has any indemnification been given by the Government of Abu Dhabi to BCCI at any time? If so, please specify the date and terms of any such indemnification, and provide a copy of the indemnification documents.

Answer: The Government of Abu Dhabi issued certain non-binding letters of comfort to members of the College of Regulators. These were not of legal effect but were written in the context of the attempt to restore BCCI to financial health and allow BCCI to remain in operation despite its financial diffi-

culties. When the members of the College decided to close down BCCI, the purpose of these non-binding letters was frustrated.

57. Did the Finance Department of the Government of Abu Dhabi write a letter dated March 21, 1991 concerning the issue of Abu Dhabi providing financial support to BCCI? If so, please provide a copy of that document.

Answer: See response to question 56.

U.S. Representatives of Sheikh Zayed

58. What is the function of James Lake and his firm on behalf of Sheikh Zayed?

Answer: The Majority Shareholders do not believe that the issues raised in questions 58-61 inclusive are appropriate subjects for inquiry by the Committee. They appear to be intentionally calculated to embarrass Mr. Lake. However, I will respond by reconfirming my testimony that the firm of Robinson, Lake has been retained by the Shareholders Working Group, on behalf of the Majority Shareholders, solely to provide advice on relations with the U.S. media.

59. How much has his firm been paid to date by the Government of Abu Dhabi and the Al-Nayhan family? Please specify by amount, type, and service performed.

Answer: The Majority Shareholders do not believe this is an appropriate area of inquiry. However, Robinson, Lake is registered under the Foreign Agents Registration Act and fully reports the fees it earns as a media consultant for the Majority Shareholders.

60. Which of Abu Dhabi's lawyers referred Mr. Lake to Sheikh Zayed?

Answer: Patton, Boggs & Blow referred the firm of Robinson, Lake (not Mr. Lake personally) to the Majority Shareholders. Sheikh Zayed was not personally involved in the decision to hire Robinson, Lake.

61. Did Mr. Lake or his firm ever communicate to the Government of Abu Dhabi or its advisors on any matter pertaining to the U.S. Senate or U.S. Congress? Pertaining to any aspect of the Executive Branch?

Answer: The implication behind this question is that the Majority Shareholders have sought to utilize Mr. Lake's services in relation to political issues. I would like to take this opportunity to once again rebut this suggestion. Robinson, Lake advised the Majority Shareholders on matters relating to media coverage of the Subcommittee hearing I attended. With that exception, Robinson, Lake has not communicated with the Majority Shareholders about matters pertaining to the Senate, Congress or Executive Branch, nor has Robinson, Lake contacted any U.S. legislative or executive officials on behalf the Majority Shareholders.

Payments

62. We have received testimony about payments by BCCI to various political figures around the world. Have you found any evidence of this in BCCI documents in Abu Dhabi?

Answer: I am not aware of any such evidence. In any event, to date, the Majority Shareholders' own investigations have been limited to financial and accounting issues, rather than political ones.

63. During your testimony, you discussed a Department of Private Affairs of Sheikh Zayed. Did the Department of Private Affairs maintain a "secret payments account?" If so, were payments ever made out of this fund to foreign heads of state or political figures?

Answer: We do not believe it appropriate to discuss the private affairs of Sheikh Zayed beyond the relevant matters concerning BCCI. However, to the extent you suggest that Sheikh Zayed has done anything improper, I can assure you that he has done nothing improper or illegal so far as I am aware.

Cooperation with U.S. Senate

64. In your testimony, you stated that the Government of Abu Dhabi would provide access to BCCI officials and documents in Abu Dhabi. The Subcommittee wishes to receive this information as soon as possible. Please set forth a timetable and procedure for the provision of this access to Subcommittee staff, including a specification of restrictions on cooperation, if any.

Answer: The Majority Shareholders are at present giving their top priority to the cooperation program being negotiated with the United States Department of Justice and the New York District Attorney's Office. Nevertheless, I note the Subcommittee's wish to have access to BCCI officials and documents, and I confirm what I stated in my testimony in this respect. The information requested in this question will be


provided to the Subcommittee as soon as possible, although it seems better to address the issues in direct discussions, rather than by written responses to questions.

Real Estate Operations, Inc.

65. A May 20, 1992 article in the Wall Street Journal identified Real Estate Operations, Inc., as an entity owned by the Abu Dhabi government and members of the majority shareholders and doing business in the United States and with BCCI. Please identify all loans provided by BCCI to Real Estate Operations, Inc., including the size of each loan, the terms of the loan, the reason for the loan, and the security for the loan, if any.

Answer: No BCCI loans have been made to Real Estate Operations, Inc., which is a holding company that does not directly own any real estate. The only BCCI loan relating to a subsidiary of Real Estate Operations was the one discussed in the Wall Street Journal.

I hereby affirm that the foregoing answers are true and correct to the best of my knowledge and belief.



Ahmed A. Sayegh

Mr. LIEBMAN. Thank you, Senator.

Senator KERRY. I understand there is somebody here from Justice? It looks like half the Department. Can you identify yourselves?

Mr. BRUTON. I am James Bruton, Acting Assistant Attorney General of the Tax Division. Until February of this year, I was the Deputy Assistant Attorney General in charge of criminal prosecutions in the Tax Division, and am directly involved in some of the incidents you discussed this morning.

With me is Mark Richard, who is a Deputy Assistant Attorney General in the Criminal Division. I would like to address——

Senator KERRY. Let me swear you both in, now that you have identified yourselves.

Raise your right hands. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BRUTON. Yes.

Mr. RICHARD. Yes.

Senator KERRY. Do we have all the documents we asked for this morning?

Mr. BRUTON. Mr. Chairman, I do not believe so at this point.

Senator KERRY. Is there any reason, why we cannot?

Mr. BRUTON. Yes. There are a number of people in the Department working on files in both the Criminal and Tax Divisions. We have, in the Tax Division, seven or eight individuals going through. There are issues of what can be disclosed in those documents.

Some of them contain grand jury references to grand jury testimony and other matters that could not be readily provided to the committee. So those are being reviewed, and appropriate redactions are being made. And I understand the Criminal Division is doing exactly the same thing. They are moving as quickly as they can.

Senator KERRY. Did you want to testify or lead off with some statement?

TESTIMONY OF JAMES BRUTON, ACTING ASSISTANT ATTORNEY GENERAL, TAX DIVISION, DEPARTMENT OF JUSTICE, ACCOMPANIED BY MARK RICHARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, DEPARTMENT OF JUSTICE

Mr. BRUTON. We appreciate the opportunity. We did not know until late yesterday afternoon that former U.S. Attorney Lehtinen would be appearing here. We do appreciate the opportunity to come in and at least clarify the record for the committee on the issues that have been raised this morning.

What I would like to do——

Senator KERRY. Let me just say for the record that we also did not know for certain that he would be appearing here until he appeared here yesterday afternoon in Washington, which is the first time the committee had seen him. Just so you understand the sequence here.

Mr. BRUTON. Thank you, Mr. Chairman. What I would like to do is to make a brief statement dealing with the tax issues that were discussed today, and Mr. Richard would like to discuss the document acquisition issues that were discussed, so he will have a brief statement of his own.

I would like to start by discussing briefly, or mentioning briefly, the procedures that the Tax Division in the Department of Justice uses in reviewing criminal tax cases. The process in a criminal tax case—in each case, there must be approval from the Tax Division before criminal charges can be brought. These procedures date back to the 1930's, and the purpose for them is to assure that properly, provable charges are brought in court and that the proper use of evidence, proper prosecution methods are used in those cases.

What we do normally is receive a report from the IRS District Counsel's Office after the case has been investigated by the U.S. Attorney's Office and the IRS. And those materials are forwarded to the District Counsel's Office for review. They make a recommendation to us and on that basis we analyze the evidence and determine whether the case should go forward, whether there is enough evidence to go forward, and whether it meets Department of Justice prosecution standards.

The case that the committee was considering this morning first came to the Tax Division on August 5, 1991 in a telefaxed letter from the former U.S. attorney. He requested an expedited review of the case to commence on August 19, 1991. The letter that was sent was addressed to former Assistant Attorney General Peterson and to Assistant Attorney General Mueller.

As a result of receiving that letter, I called the Criminal Division and spoke to Dennis Saylor in the Criminal Division and discussed with him what would be done in terms of handling of that case. He told me that the Criminal Division wanted us to do whatever was necessary to expedite review of that case and that they wanted the U.S. attorney to be able to bring prosecution as quickly as was possible. So he asked us to review the case, but to do so taking whatever measures were necessary to make sure that the case got reviewed quickly and prosecution could proceed apace.

As a result of that discussion, and our request from the U.S. attorney, I assigned two trial attorneys rather than the normal one trial attorney to review the case. And we decided to send them to Miami to review the case on site. The U.S. attorney had requested that we appear on August 19. I sent the attorneys down on August 13. Unfortunately, at that point the special agent's report wasn't completed, so those attorneys worked on other matters until the special agent's report was available on the 16th of August.

They worked through the weekend. The following week, I took what is an extraordinary measure in the Tax Division of sending an assistant chief down to review the case on site. We made arrangements for the actual sign-off to take place in Washington over the telephone, and in our view, the case would be ready to prosecute on August 23, when the U.S. attorney had requested it.

Following August 19, our attorneys began calling the office. And I spoke to them, and the others in the division spoke to them, and they were having serious difficulties with case. Based on my discussions with those individuals, they had not had any discussions with the U.S. attorney saying that the case was in good shape to go, or ready to go, or anything like that. In fact, they had serious legal and factual questions.

In fact, on August 22, we received a communication from the District Counsel of IRS in Miami who stated that, in fact, of 19 counts

that had been recommended for prosecution, 22 were legally insupportable. We received that on August 22. That was communicated to the U.S. attorney at the sametime we received it.

Senator BROWN. Excuse me. When you say, 19 counts, are we talking in relation to 1984? What portion of it related to the period where the statute of limitations would run?

Mr. BRUTON. There were one or two counts in the statute of limitations. There was a single count that was the one that the IRS found insupportable that I referenced in my August 23 letter.

Senator BROWN. That is the one where the statute would run was among those in which their feeling was the evidence was inadequate?

Mr. BRUTON. Yes. And ultimately it was resolved that that was legally an insupportable charge. It was not brought. And so among the others there were similar charges for subsequent years that could have been brought but simply weren't because there was no legal basis for them.

In any event, following the process of determining what the status of the case was, we spoke on site to the assistant U.S. attorney and let him know that the case was not ready to go at that point. I received on the 22nd a letter from the U.S. attorney who then raised, for the first time, the issue of the statute of limitations, and felt that notwithstanding the problems in the case, it should nevertheless go forward.

In any event, we felt to the contrary that there were plenty of other counts to review and that we had time to get those counts reviewed adequately and determine whether or not there was legal support for them. As a result, on August 23, we did not authorize the prosecution of criminal charges, and so there was no indictment brought on that date. In fact, we kept our attorneys in Miami for the following week. They pursued various evidence, spoke to witnesses, and handled a number of matters to assist the U.S. attorney. And on September 5, we had a meeting back in Washington where we discussed the case. We raised all the issues that we concerned about at that time.

Ultimately, we had serious concerns. In fact, when the case was eventually reviewed in the Tax Division, six lawyers who reviewed the case file and the evidence concluded that there were serious problems in that the case was not ready for prosecution. The U.S. attorney appealed that decision to the Deputy Attorney General in accordance with the normal procedures, and the Deputy Attorney General in a subsequent letter, I believe dated November 6, authorized him to go forward subject to concerns that the Tax Division had raised in the case.

The charge was brought, I believe, on November the 14. A single count. Now, the indictment that was originally presented to us consisted of a conspiracy charge and 18 substantive counts. There were six individual defendants in the first proposal, and three corporate defendants. The case as ultimately prosecuted had three individual defendants and one corporate defendant. So as a result of the work that the Tax Division did and the concerns we raised, the U.S. attorney was not permitted to proceed with a number of the charges that he felt were appropriate to start with.

In fact, as we reviewed the case and looked at the issues that had developed, we felt that there was a lack of evidence completely with a number of the initial recommendations that were involved. In any event, we made clear to the U.S. attorney all of the concerns that we had, and it was my understanding that, in fact, he was taking steps to alleviate those concerns.

I understand also this morning that there was discussion that the Tampa indictment of 1988 somehow precluded the U.S. attorney on money laundering charges. I had, in fact, until this day not heard that theory espoused by anyone, and it's my understanding that, in fact, it was the Department's view to the contrary that money laundering charges that were supportable could be brought in other districts.

I am aware, however, of discussions concerning the Tampa plea agreement in connection with the tax case. We were concerned because, in addition to other parts of that plea, there was a tax plea that very closely resembled the charges that were being sought in connection with tax case that we were reviewing.

Ultimately, there were two defendants who we were concerned suffered double jeopardy, and they were not placed in the indictment. And there was a question whether the plea agreement affected a third corporation that was to proceed. That was not a basis for declining the case, but our concerns were noted for the U.S. attorney's benefit so that that case could be dealt with in terms of motions.

Those are the issues that as I understand it this morning were raised, and I am happy to entertain questions concerning the tax case.

Senator BROWN. Let me, if I could—we have a vote on, and I will slip out in a minute and vote and come back. Senator Kerry has preceded me and he will be back before me, but let me just proceed to get these issues on the table.

Let me summarize, as an initial response to your testimony, the facts you presented are dramatically different from what we heard this morning, a total contrast in a number of very specific areas, and I think before you finish we will want to pin those down.

But first of all, the testimony you have given that the first you heard of this was August 5, that is dramatically different from what I think was conveyed this morning, that what was conveyed this morning was that this had been worked on for a long period of time and that it was not new at all. So that is one area that we would want to explore.

The second is the indication that all tax provisions, tax prosecutions are handled differently from other normal prosecutions. That special treatment for tax I assume is related to the complexity of our tax law and a variety of reasons for that, but I think that is a very significant factor and very different.

Third, the position of the Department in expediting an investigation I don't think was fully brought out this morning. That is a dramatic different focus than I think the impression that was given this morning.

Fourth, the fact that the investigators you sent down to work on the case agreed that it was not ready for trial and the facts were not adequate, that is dramatically different than what we heard

this morning, which was a representation that they agreed that it ought to go ahead to the grand jury.

Fifth, that the Deputy U.S. Attorneys agreed with your position that it was not ready to go to the grand jury. This morning it was indicated that they thought it should go to the grand jury.

There is a variety of other things that are dramatically different than the testimony we had this morning. We want to cover that, and I hope you all will excuse us for a very brief recess, but I believe Senator Kerry will be back shortly, and I will return as well. Thank you for being willing to come so quickly on such short notice.

The committee is recessed for 5 minutes.

[A brief recess was taken.]

Senator BROWN. The committee will come back to order. We appreciate your staying with us and putting up with us.

Let me take you back, if I could, to your testimony with regard to these charges. I have gone through a number of areas where there were dramatic differences between the testimony we had this morning and yours. I would like to ask you to comment on that, and I think perhaps the first and most significant is the question of when you all heard about the investigation, first of all, and second the process you followed.

Just to bring that to a head, let me see if I can get your testimony clearly in mind. You indicated that all prosecutions relating to violations of the Internal Revenue Code, or the Tax Code, tax-related criminal charges, have to be cleared by your division before they can go to a grand jury.

Mr. BRUTON. That is not absolutely correct. Before the charges can be sought in a grand jury, in fact the normal process is for us to authorize a grand jury investigation which will be conducted without authority to bring the charges but to inquire into the questions presented, and then at the conclusion of that investigation the U.S. attorney has to come back to the division to seek approval to present the charges to the grand jury for seeking an indictment.

Senator BROWN. So if I understood what you said, you are really saying there are two levels of approval here, and perhaps one even further down the road. The first is even to call a grand jury to sit in on questions of this kind.

Mr. BRUTON. That is correct. In this case, for example, the process is known as an expansion of a grand jury. I understand that there was an investigation going on, so the U.S. attorney's normal procedure would be to write a memorandum that goes to the IRS and to our office stating that he would like to commence a tax grand jury and have disclosure of tax returns and then proceed with the investigation.

That's the normal procedure. We have the veto power over that, but normally we don't exercise that. We allow the U.S. attorney to investigate in those cases. That would be the procedure followed here.

Senator BROWN. And you're saying there was no memorandum requesting a tax grand jury.

Mr. BRUTON. Well, there was. That was coterminous with the request for prosecution authority, so there was an investigation going

on but no request for a grand jury in this case until they sought approval to prosecute.

Senator BROWN. Again, the August 5 date is the first you heard.

Mr. BRUTON. Well, actually it's a little later than that, because we didn't actually get the paperwork. We were advised of this grand jury—I should clarify something just to make sure that it's understood. We deal in the Tax Division with individual cases, so that normally the cases are presented to us individually, they're opened individually, the IRS records them individually.

There were cases in our office related to BCCI involving individuals and others, but no case involving the bank or bank employees up to the August 5 memorandum that came in. We had had a number of small cases in dealing with individuals that were presented, but at that point the larger case addressing the bank had not been brought to our attention, and in fact I believe a number of those charges had already been approved by the time we received the August 5 memorandum, but those cases were being looked into by the Department and we were reviewing those to assist the U.S. attorney.

Senator BROWN. Well, that's testimony dramatically different from what we had this morning.

In an additional aspect, I inquired as to whether or not there was such an entity as an authorized tax grand jury investigation, which is the terminology used in your letter. I was advised this morning that there is simply a grand jury, that there is not a separate grand jury that investigates tax matters.

Mr. BRUTON. The grand jury itself is not separate. The same grand jury may inquire into both charges, but in order to have the disclosure and the authority to proceed under title XXVI, there needs to be a request made to expand the scope of that investigation to include tax charges. That is what I meant in the letter when I said there is no authorized grand jury. The reason for that is that we keep records when the cases come in.

An important case comes in and there's a grand jury request, we normally contact the U.S. Attorney's Office, discuss with the U.S. Attorney's Office the timetable for the investigation so that we can be sure to be available to review the case in an appropriate time, also offer our assistance in the event that there is a need for tax attorneys being involved in the case, so we do that quite often in cases where there is a major investigation underway and we obviously, for our purposes, need to know the case is there.

In this case, we did not know it was there, and the procedures are set forth in Title 6 of the U.S. Attorneys Manual. Everybody gets those procedures, so that's the rule and that's what needs to be followed.

Senator BROWN. What you're telling me is that there is a clearly different procedure set up for cases that involve tax matters.

Mr. BRUTON. That is correct.

Senator BROWN. And that far from it being highly unusual for permission being denied to proceed with this matter to the grand jury, that it was normal procedure to insist on your review before any submission to a grand jury was performed.

Mr. BRUTON. That is correct, Senator. In fact, we often decline cases that don't meet the standards of the Department. In many

cases, we will ask that further investigation be conducted to flesh out problems with a case, so it may be that the U.S. attorney initially wants to return an indictment on a particular date but finds that because of some deficiency there is further investigation that needs to be done, and that is quite routine.

Senator BROWN. Well, it seems to me that the testimony you've given is dramatically and distinctly different than the testimony we had this morning, that the testimony we had this morning implies a number of things which you're telling me are simply not the case.

I know the chairman has a number of questions in this area he will want to go through with you and also to deal with the matter of the subpoena, but I would appreciate your reviewing the testimony that we had this morning and preparing a memo, if you would, for this committee detailing each and every instance where you feel it was not correct and submitting it for the record, if you are willing.

Mr. BRUTON. I would be glad to. If it is ambiguous or simply unclear I would be glad to clarify it to set forth the procedures that we use.

Senator BROWN. Well, I am hoping you will do more than that. I'm hoping you will give us a 1-2-3 specifically where the information we received this morning you feel is incorrect.

Mr. BRUTON. I haven't seen the testimony and was not here this morning, and so I don't know that I can do that, but certainly I will endeavor to do that.

Senator BROWN. I appreciate that.

[The information referred to follows:]



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 26 1992

Honorable John F. Kerry
 Chairman
 Subcommittee on Terrorism, Narcotics and
 International Relations
 Committee on Foreign Relations
 United States Senate
 Washington, D.C. 20510

Honorable Hank Brown
 Ranking Minority Member
 Subcommittee on Terrorism, Narcotics and
 International Relations
 Committee on Foreign Relations
 United States Senate
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Dear Mr. Chairman and Senator Brown:

This responds to Senator Brown's invitation at the Subcommittee hearing on May 14, 1992, to the Department of Justice to submit an annotated list of statements made by Dexter Lehtinen, former United States Attorney for the Southern District of Florida, during his testimony which we view as incorrect or incomplete. The Department's response to Senator Brown's request is enclosed. The Department requests that the enclosed response be made a part of the official record of the May 14, 1992, Subcommittee hearing.

The Subcommittee also requested that the Department provide it with copies of correspondence between Department headquarters and the U.S. Attorney's Office for the Southern District of Florida regarding (1) the review by the Tax Division of the proposed prosecution of BCCI for criminal tax offenses; and (2) the review by the Criminal Division's Office of International Affairs of the proposed enforcement of "Bank of Nova Scotia" subpoenas directed to BCCI.

All documents in the former category were provided to the Subcommittee on May 22, 1992. Unfortunately, all documents in the latter category either constitute confidential grand jury information protected by Rule 6(e), Federal Rules of Criminal Procedure; documents discussing sealed proceedings in the

district court for the Southern District of Florida and the Eleventh Circuit Court of Appeals; or information, which if disclosed, could compromise ongoing criminal investigations and prosecutions in Miami. We are unable therefore to provide copies of any of these items to the Subcommittee, including those which Mr. Lehtinen specifically referred to during his May 14 testimony.

Please do not hesitate to contact me if you have any questions about this matter.

Sincerely,



W. Lee Rawls
Assistant Attorney General

Enclosure

RESPONSE OF DEPARTMENT OF JUSTICE
to Testimony of Dexter W. Lehtinen
before the
Senate Committee on Foreign Relations
Subcommittee on Terrorism, Narcotics and International Operations
May 14, 1992

On May 14, 1992, the Subcommittee heard testimony by Dexter Lehtinen, former United States Attorney for the Southern District of Florida, concerning that District's criminal investigations related to the Bank of Credit and Commerce International ("BCCI"). That day, the Department presented the testimony of Acting Assistant Attorney General James A. Bruton of the Tax Division and Deputy Assistant Attorney General Mark M. Richard of the Criminal Division in partial response to Mr. Lehtinen. The Subcommittee also invited the Department to submit a point-by-point rebuttal to Mr. Lehtinen's remarks.

Mr. Lehtinen's testimony involved criminal investigations that have led to three prosecutions presently pending in the Southern District of Florida: United States v. Munther Bilbeisi and Kenneth Grushoff, Case No. 91-603-Cr-HIGHSMITH; United States v. Shaikh Mohammad Shafi, et al., Case No. 91-832-Cr-RYSKAMP; and United States v. David Paul, et al., Case No. 92-134-Cr-GRAHAM(S). The Grushoff case is currently scheduled for trial. The Paul case is especially significant, in that it involves one of the largest savings and loan failures in the nation.

Mr. Lehtinen was a private citizen when he testified before the Subcommittee. His testimony was neither authorized nor anticipated by the Department of Justice.

The Department of Justice does not concede that Mr. Lehtinen's testimony before the Subcommittee was accurate, fair, or professional. Certainly the general thrust of his remarks -- that the Department of Justice improperly interfered with his efforts to prosecute BCCI -- is completely false and irresponsible. While there is a strong desire on the Department's part to give a line by line response to Mr. Lehtinen's erroneous assertions, there are stronger policy reasons militating against such a response.

Such a detailed response could potentially adversely affect the pending litigation and would entail public disclosure of evidence and deliberations within the Justice Department that would violate Rule 6(e) of the Federal Rules of Criminal Procedure (concerning grand jury secrecy) and 26 U.S.C. §6103 (concerning the confidentiality of tax investigations). Furthermore, the Department of Justice cannot abandon the traditional protections of confidentiality which safeguard the integrity and fairness of its law enforcement functions.

As a private citizen, speaking without Department authorization, Mr. Lehtinen's testimony did not and could not effectuate a waiver of these privileges and protections. Nor can Mr. Lehtinen's testimony release the Department from the strict requirements of non-disclosure of matters occurring before a grand jury or in tax investigations.

Nonetheless, the Department of Justice can make several important points for the Subcommittee to consider in assessing Mr. Lehtinen's testimony.

First, any suggestion by Mr. Lehtinen or anyone else that the Department of Justice sought to subvert or improperly delay BCCI-related investigations or indictments for any reason is completely and utterly false.

Second, the Department emphatically denies the suggestion that disagreements between Department officials and field prosecutors are attributable to improper motives. Valid disagreements between Department headquarters and United States Attorney's Offices concerning prosecutorial strategies and approaches are not unusual, and indeed are the inevitable product of a proper and desirable deliberative process between professionals. This process serves both the government's interests in the strongest possible prosecution and individual targets' interests in a fair and objective process.

Third, and as noted, Mr. Lehtinen's testimony largely concerned internal law enforcement decisions by career officials at the Department. His testimony has been responded to, in part, by the testimony of Department officials, and by the production of certain redacted documents. We believe that the interests of justice would be ill-served by the Department submitting additional rebuttals that could prejudice ongoing criminal matters and could potentially chill internal Departmental deliberations in the future.

Certain additional points of rebuttal of a general nature are set forth below.

1. Approval of Tax Prosecution

Mr. Lehtinen suggested, among other things, that he was prohibited by the Department of Justice from bringing a tax indictment against BCCI in August 1991, for reasons that he did not believe were adequate, and that he was eventually permitted to bring a modified version of that indictment three months later.

Since the 1930's, the Department of Justice has had written procedures governing the institution of criminal tax

prosecutions. See generally Title 6, United States Attorneys' Manual ("USAM"). These procedures provide nationwide uniformity and ensure legal and evidentiary sufficiency in a complex body of criminal law that potentially affects more than 200 million taxpayers. Among the principal requirements are (1) that prosecutors notify the Tax Division, and obtain approval, before conducting a grand jury investigation of possible tax violations [USAM 6-2.120], and (2) that the Tax Division review and approve any proposed criminal tax charges [USAM 6-2.127]. The purpose of the former requirement is to permit the lawful disclosure of tax information to a United States Attorney's Office pursuant to 26 U.S.C. §6103(h), and to provide the Tax Division the information it requires to keep track of ongoing tax grand jury investigations and targets. These requirements are hardly obscure, but are commonly known and readily accessible to federal prosecutors throughout the country.

In August 1991, the Tax Division conducted an expedited on-site review of a proposed tax prosecution in the Southern District of Florida, at Mr. Lehtinen's request. The notification to the Tax Division, and the request for expedited review, was made on August 5, 1991, only two and one-half weeks prior to the proposed indictment date; nonetheless, the Tax Division devoted significant resources to the matter in order to ensure that Mr. Lehtinen's proposed indictment would not be delayed by the reviewing process.

Mr. Lehtinen's suggestion that as of August 22, 1991, the career prosecutors in the Tax Division who were reviewing the matter had "no problem" with the proposed prosecution is simply wrong. In fact, the Tax Division prosecutors who reviewed the proposed indictment and the underlying evidence had serious legal and evidentiary concerns, which they communicated to the Assistant U.S. Attorneys assigned to the matter. Because of those concerns, the Tax Division did not approve the prosecution at that time in the form proposed. The specific legal and evidentiary reasons for that decision must remain confidential, in light of the specific legal requirements of Rule 6(e), Section 6103, applicable privileges, and the potential for prejudice to ongoing investigations and prosecutions.

Mr. Lehtinen was instructed not to return the indictment on August 23, 1991, pursuant to long-standing Department of Justice policy prohibiting the filing of criminal tax charges without Tax Division approval. The valid law enforcement reasons behind that decision were fully communicated to Mr. Lehtinen and his office.

Any disagreements between Mr. Lehtinen and the Tax Division were based solely on legitimate law enforcement reasons, and not because the Tax Division had an improper or corrupt motive. Experienced professionals in the Tax Division discussed their concerns with Mr. Lehtinen and his office, and Mr. Lehtinen's

office agreed at that time with many of the concerns raised by the Tax Division. It was understood and expected that Mr. Lehtinen would take steps to address the remaining concerns before seeking any indictment on tax charges.

The single-count, four-defendant conspiracy indictment presented to the grand jury on November 14, 1991 was materially different from the draft indictment originally proposed by Mr. Lehtinen. The changes were made by Mr. Lehtinen and his office after lengthy discussions with the Tax Division and the IRS District Counsel. Under the circumstances, any suggestion that the delay was improper or unwise is simply false.

2. Impact of Tampa Plea Agreement on Further Prosecutions

Mr. Lehtinen suggested that the plea agreement in the BCCI case in Tampa prevented him from bringing a separate prosecution against BCCI in Miami. Mr. Lehtinen's testimony appears to have blurred an important distinction between two legal concepts: the effect of the language in the plea agreement providing that the government would not prosecute BCCI further in the Middle District of Florida, and the effect under the Double Jeopardy Clause of the prosecution of BCCI in Tampa.

The Double Jeopardy Clause of the Fifth Amendment protects a defendant from a subsequent prosecution for the same offense, and protects against multiple punishments for the same offense. See, e.g., Grady v. Corbin, 110 S. Ct. 2084 (1990); North Carolina v. Pearce, 395 U.S. 711 (1969). Two BCCI entities -- BCCI (Overseas) Ltd. and BCCI, S.A. -- pleaded guilty in Tampa in January 1990 to conspiring to, inter alia, defraud the United States by impeding, obstructing, and defeating the Internal Revenue Service in performing its lawful governmental functions in collecting income taxes, in addition to pleading guilty to violations of the money laundering statutes. Thus, double jeopardy principles precluded prosecuting those BCCI entities a second time for the identical offenses that had previously been the subject of a conviction in Tampa. Under the Double Jeopardy Clause, a conviction following a guilty plea has the same effect as a finding of guilty (or an acquittal) by a judge or jury.

Because Mr. Lehtinen proposed a tax conspiracy prosecution involving BCCI, an analysis of the potential double jeopardy issues raised by such a prosecution was required. It is important to emphasize, however, that the provisions of the plea agreement itself did not bar prosecution of BCCI in the Southern District of Florida. Contrary to Mr. Lehtinen's testimony, the Department of Justice concluded that the Tampa plea agreement would not bar an indictment of BCCI Holdings (Luxembourg) S.A. in Miami for Miami-based activity. Indeed, paragraph 16 of the Tampa plea agreement states: "It is further understood that this

agreement is limited to the Office of the United States Attorney for the Middle District for Florida and cannot bind any other federal, state or local prosecuting authorities” Accordingly, the plea agreement made clear that it bound only the United States Attorney for the Middle District of Florida, and did not apply to prosecutions by any other U.S. Attorney’s Offices in any other federal district. The fact that neither double jeopardy principles nor the Tampa plea agreement precluded subsequent prosecutions by BCCI is evidenced by the guilty pleas by four BCCI entities to racketeering charges in the United States District Court for the District of Columbia in January 1992.

Put simply, it was the United States Constitution -- not the provision in the Tampa plea agreement -- that created any potential problems for Mr. Lehtinen.

3. Enforcement of “Bank of Nova Scotia” Subpoenas

Mr. Lehtinen appears to have disagreed with the Department’s handling of his efforts to enforce so-called “Bank of Nova Scotia” subpoenas, and suggested that the failure of the Department to approve enforcement of certain subpoenas somehow prevented him from making a criminal case against BCCI.

The Criminal Division’s Office of International Affairs (“OIA”) is responsible for assisting federal and state prosecutors in obtaining evidence outside the United States. They accomplish this through formal requests (including treaty requests, letters rogatory and requests under executive agreements), informal means, and subpoenas. In order to ensure that prosecutors’ requests are consistent with foreign law and that the international ramifications of such requests are considered, OIA advises prosecutors in selecting an appropriate method for requesting assistance from abroad.

The United States Attorneys’ Manual contains guidelines on international assistance that govern, among other things, the issuance and enforcement of “Bank of Nova Scotia” subpoenas. These are subpoenas that seek bank or business records in foreign jurisdictions from branches of the bank or business located in the United States. Although the courts have upheld the use of such subpoenas to compel banks to produce records held by a branch of the same bank in a foreign country, see, e.g., In Re Grand Jury Proceedings (Bank of Nova Scotia), 740 F.2d 817 (11th Cir. 1984), cert. denied, 469 U.S. 1106 (1985); In re Grand Jury Proceedings (Bank of Nova Scotia), 691 F.2d 1384 (11th Cir. 1982), cert. denied, 462 U.S. 1119 (1983), foreign governments strongly object to such subpoenas, contending that they constitute an improper exercise of United States jurisdiction. The use of such compulsory methods are thus controversial, and

may adversely affect our government's law enforcement relationship with foreign countries; furthermore, enforcement proceedings often result in protracted litigation over a period of several years. Accordingly, the USAM provides that "all federal prosecutors must obtain written approval through OIA before issuing any subpoenas to persons or entities in the United States for records located abroad." USAM 9-13.525. Similarly, the Department requires that prosecutors obtain authorization from OIA before seeking to enforce subpoenas for records located outside the United States. Id.

The USAM sets forth the factors which are considered by the Criminal Division in determining whether Nova Scotia subpoenas should be authorized or enforced. The factors include, among other things, the availability of alternative, less confrontational methods for securing the records, such as the use of mutual legal assistance treaties ("MLATs") or letters rogatory.

The "Bank of Nova Scotia" subpoenas that Mr. Lehtinen sought to enforce involved certain countries as to which the United States has MLATs, executive agreements, and other arrangements for cooperation in force, which were available for at least some of the records Mr. Lehtinen was seeking. Furthermore, some of the applicable MLATs contain provisions which specifically forbid enforcement of grand jury subpoenas without resort to the treaty's provisions. In addition, as to certain of the subpoena demands, OIA and the Criminal Division believed that there were more efficient and less controversial means to obtain the requested records.

In summary, Mr. Lehtinen was required to seek the approval of the Criminal Division prior to attempting to enforce the subpoenas in question. That approval was granted with respect to the subpoenas directed to evidence in certain countries. With respect to the other countries, OIA and Miami worked together to find alternative, less confrontational, means of obtaining the same evidence. Any internal disagreements as to the appropriate approach that may have been expressed in the course of that process were solely the result of differences of opinion between professional prosecutors, and not some purported impropriety, as suggested at the hearing.

The alternative methods of acquiring foreign records suggested by OIA have been successful in many instances, and other efforts appear likely to succeed in the near future. Attorneys from OIA provided substantial assistance to the U.S. Attorney's Office for the Southern District of Florida and other U.S. Attorney's Offices in securing thousands of pages of BCCI-related records from a variety of foreign jurisdictions. In addition, the Department expects that it will receive millions of pages of additional BCCI-related foreign records in the near

future. These records will, of course, be made available to prosecutors from Miami.

As with all grand jury matters, information relating to the issuance or enforcement of the grand jury subpoenas directed to BCCI must be kept secret by law. Fed. R. Crim. P. 6(e).

4. Foreign Travel

Mr. Lehtinen further suggested that his ability to prosecute BCCI was hampered by the failure of the Department of Justice to authorize certain foreign travel.

Foreign travel by U.S. prosecutors must be cleared by the Office of International Affairs and the Executive Office for United States Attorneys. As the United States Attorney's Manual states,

OIA ensures that the prosecutors' plans are consistent with foreign law. EOUSA notifies the proper American diplomatic or consular post through the Department of State and verifies that the host country has consented. . . . The process can be time-consuming, . . . but failure to comply may cause a wasted trip or worse, e.g., refusal of permission to enter the country, expulsion from the country, or even arrest.

USAM 9-13.534.

In addition, the complexity of the BCCI investigation has required centralized coordination of a number of matters, including foreign travel. It would be obviously unacceptable, and indeed offensive to the host country, for prosecutors from multiple U.S. Attorney's Offices to make multiple, uncoordinated trips abroad seeking evidence or assistance from the same foreign sources. Moreover, many countries will not make records or witnesses available until formal requests have been submitted and court orders obtained.

As a result of the foregoing requirements, it has not been possible to grant every request made by every prosecutor for foreign travel in the BCCI matter; rather, all such requests must be prioritized and coordinated. Any instance where a request from Mr. Lehtinen for foreign travel on a specific date was declined was made solely for valid reasons, and not for the purpose of "interfering" with his office's investigation. Prosecutors from Miami have visited a number of different foreign jurisdictions in connection with their BCCI-related cases and investigations, and will continue to do so for the indefinite future.

Senator KERRY. Thank you, Senator Brown.

Let me try to understand this, because I was not able to be here for all of your testimony, and also I've been here since 9 this morning and it's now 5:30, and my brain is a little bit scrambled, and so I want to try to just get clear—I heard Senator Brown say what you're saying is dramatically different and very separate from what was said this morning. What is it that is dramatically different and very separate from what was said this morning?

Mr. BRUTON. Well, I wasn't here this morning, and so I'm not sure of just precisely what it is different in. I have simply stated that the first time the Tax Division was aware of this case was August 5. This specific case involving these proposed defendants, there was a draft, a 19-count indictment involving nine proposed defendants, and that case was presented to the Tax Division actually for the first time on August 16, but we first heard about it on August 5.

Now, it is possible that——

Senator KERRY. Are you privy to the letters that have been written earlier to other people?

Mr. BRUTON. We were not. We had not been requested to be involved.

Senator KERRY. So in fact if he had suggested he wrote a number of letters on a specific date that went to somebody, somebody in Justice Department could well have been aware of the case, though you weren't.

Mr. BRUTON. The Criminal Division would be a perfect example.

Senator KERRY. So it may not be dramatically different from what he said at all. I mean, he said he wrote a letter to a specific person. That specific person either got the letter or they didn't and if you would produce the letters for us, we could judge that.

Mr. BRUTON. Well, certainly, Mr. Chairman, we are endeavoring to get those letters.

Senator KERRY. I don't see what is dramatically different yet there. I mean, he said he sent some letters up there, and you may not specifically have known about it. That doesn't mean somebody in Justice Department didn't know.

Mr. BRUTON. That is perhaps true. The issue is getting Tax Division approval.

Senator KERRY. Well, what he said was very specific this morning. He said he wrote a specific letter to a specific person. He didn't say he wrote it to you.

Now, what's the next dramatically different thing?

Senator BROWN. Mr. Chairman, those were my words.

Senator KERRY. What is the other thing that is different from what was said? I would like to know.

Senator BROWN. Well, first of all it seemed to me that there was a dramatic difference with regard to the date at which personnel were notified. I think you've covered that, and obviously it's a matter of checking, for them to check and be specific.

Second, my impression of the testimony this morning was that the experts, the Tax Division investigators, had come down and looked at the case. My understanding was that they had felt it was appropriate to go ahead with regard to submission to the grand jury.

The testimony we've just had indicates that they, far from being in favor of going to the grand jury, felt that it was not of a quality to go to a grand jury, and as a matter of fact had recommended against it going to a grand jury.

Third, my impression this morning was that the Assistant U.S. Attorneys in the office of Florida favored taking it to the grand jury. The testimony we've just had indicates that they opposed taking it to the grand jury.

Senator KERRY. Is that accurate?

Mr. BRUTON. I'm not sure that one I understand. Who were the people who said don't take it to the grand jury?

Senator BROWN. I thought in listing people who felt that it was not an adequate case to take to the grand jury you had indicated that the assistant U.S. Attorneys who handled the prosecution in that office in Florida agreed that it was not an appropriate case.

Mr. BRUTON. I'm glad to have the opportunity to clarify that. It was the attorneys with District Counsel of IRS that were recommending against prosecution. Under our procedures, the IRS reviews the case file. Their attorneys go in and examine to see whether or not the case meets their standards. They then make a recommendation to us.

At the time this case was developed, the IRS attorneys went down, or went to the U.S. Attorney's Office, reviewed the exhibits on the weekend with our attorneys. When they concluded their review, they sent a memorandum to us and to the U.S. Attorney indicating that they felt that the case was not appropriate to prosecute on 18 of 19 counts. There was one count that they recommended prosecution on which was the conspiracy charged, and that was one of the charges we were looking at, and so that is the full explanation.

Senator BROWN. When I inquired about the position of the prosecutors handling the case, your reference was to the IRS prosecutors and not to the U.S. Attorney prosecutors.

Mr. BRUTON. That is correct. I should add, though, that we had a meeting with the U.S. Attorneys Office in September, September 5, 1991. And in that meeting, of the original 19 counts that were proposed, the U.S. Attorneys Office went through and the assistants who were there agreed that certain items should be withdrawn from the case.

Subsequent investigation concluded that they should withdraw other items from the case as well. In fact they voluntarily pulled back a number of items that we had raised concerns about, to bring that case down to a single count from the original 19 counts, from the original 9 defendants down to 4 defendants, and down to a single count which was simply the conspiracy. So that was the way that developed. But they did recommend withdrawal of a number of those counts, and that was done.

Senator KERRY. But eventually, in November, he got a letter giving him basically the carte blanche we talked about this morning. And he says he brought the case essentially along the lines of the case he presented in August.

Mr. BRUTON. Well that would not be accurate, because the last case presented in August was 19 counts and 9 defendants. It that's

what was said, that would not be accurate. The case that was brought involved——

Senator KERRY. Excuse me. He did not bring the same number of counts but the evidence did not change, he said.

Mr. BRUTON. Well that may not be entirely accurate too, because our lawyers went out with IRS agents and interviewed a number of witnesses and participated in some additional evidence acquisition. So I am not sure that that is entirely accurate either.

Senator KERRY. Well I am going to go back and we will look at the language, but I think the word was essentially the same. I think he said he did some additional interviews, et cetera, but it was essentially the same case, basically.

Let me just ask you a couple of other things, and I do not have a lot to dwell on in this because I am not sure that until we have all of the documents, there is much point in discussing it. But the fact is that this was not just any tax case. This was BCCI, was it not, in 1991.

Mr. BRUTON. That's true, Senator.

Senator KERRY. And BCCI in 1991 had received a tremendous amount of exposure and coverage, had it not?

Mr. BRUTON. That is true. A lot of our cases have that kind of coverage, though. I think I could go back through with you——

Senator KERRY. I understand. But as we were told this morning, there was a big meeting scheduled upon learning that the Manhattan District Attorney was about to indict. Are you aware of that meeting? Were you there?

Mr. BRUTON. I was not at that meeting and I'm not aware of that meeting.

Senator KERRY. Are you aware of whether or not U.S. Attorneys were called in from various locations who had knowledge of this case, and there was a meeting in Washington because Bob Morgenthau was about to indict?

Mr. BRUTON. I don't know of that specific meeting, but I do understand that meetings——

Senator KERRY. Are you aware of that meeting?

Mr. RICHARD. I was aware of meetings called by Bob Mueller for all the affected U.S. Attorneys' offices.

Senator KERRY. That took place several days before Bob Morgenthau indicted, and several days afterward.

Mr. RICHARD. I don't know the timing; I wasn't personally at the meeting. My understanding was that it was called to ensure that there was adequate coordination and that all of these cases were to be expedited by the U.S. Attorneys.

Senator KERRY. The meeting had never been called before Bob Morgenthau was about to indict, had it?

Mr. RICHARD. Senator, again, I was not personally involved.

Senator KERRY. Do you know whether or not Mr. Lethinen might have had reason to be somewhat frustrated that his cases were not proceeding forward or that there did not seem to be an ability to get his subpoenas enforced?

Mr. RICHARD. I would like to address the subpoena issue, at your convenience.

Senator KERRY. Go ahead.

Mr. RICHARD. If I may just preliminarily, I'd like to take a moment and explain my role in the Criminal Division and how I come to be here today.

I am a deputy assistant attorney general in the Criminal Division, and among my duties is the supervision of our Office of International Affairs. That office is directly responsible for assisting prosecutors, both State and Federal, in securing information abroad, evidence, and access to witnesses. They accomplish this through a variety of devices, including the utilization of formal mutual legal assistance treaties, various informal arrangements, use of letters rogatory and other international devices for acquiring assistance from foreign jurisdictions.

On my left is Mr. John Harris, deputy director of the Office of International Affairs, who is familiar with some aspects of this particular matter. Let me also, by way of background, explain the process we employ, especially with the utilization of what we call Nova Scotia subpoenas.

These are subpoenas directed at, by and large, affiliates located in the United States seeking records located in foreign jurisdictions. This device, this technique, is generally frowned upon extremely by many many foreign jurisdictions who regard our utilization of such jurisdiction as being illegal under international law. It is highly confrontational, highly controversial, and one that frequently involves literally years of litigation before it's finally resolved one way or the other.

In examining these kinds of claims, courts generally seek a balancing test. That is to say they examine whether the Government has alternative methods for hopefully obtaining the records they need, and whether the Government has, in fact, availed itself of those alternative methods.

Because of the nature, the unique nature of Nova Scotia subpoenas, in 1988 the department instituted a process whereby department approval, Criminal Division approval, would be required before the issuance of such Nova Scotia subpoenas. This was designed to insure that assistant U.S. Attorneys were brought into contact with our Office of International Affairs prior to issuance of subpoenas of this nature, and enter into a dialog to explore whether there were alternative ways, less confrontational, more efficient, more effective, for securing the records in question.

We then go through the balancing tests ourselves, examining the various factors that we believe are relevant, and make a determination. The first determination is do we issue the subpoena. Later on the second determination is do we seek to enforce that subpoena.

In the cases in question, the various subpoenas were issued without going through this process. Some were issued, I understand, as early as August 1990. And they remained in that fashion until they were brought to our attention in March 1991 where, for the first time, we learned that subpoenas, Nova Scotia subpoenas directed at about nine countries, were, in fact, already issued.

At that time permission was sought to enforce those subpoenas, the most confrontational stage. The issue came to my personal attention. I did authorize enforcement action in two cases, one involving the subpoena against Panama, the other against the UAE.

With respect to the other countries, we declined at that time to enforce—to authorize enforcement for a variety of reasons, not the least of which is that we thought we had alternative methods available for securing the records.

To begin with, the articulation, the nature of the records being sought at that time, made it pretty clear to our people that the prosecutor was not aware of what records were being sought, what he wished, where they were located, and that there better ways of at least pinning down those two facets before we went to foreign countries to seek their assistance.

Senator KERRY. Could you just tell me, did that happen?

Mr. RICHARD. In conversations with the southern district of Florida, it was proposed and agreed to that they would pursue, in the context of grand jury inquiry, to pin down the location of the records in question and to better define what those records were that they were seeking. We did, in the course of our inquiry, suggest specific steps to be taken in particular instances to secure records, and through the help of the Office of International Affairs were able to secure records from the United Kingdom that were responsive to the needs of the district.

Reflecting Bob Mueller's direction that we should pull out all stops in trying to do what we can to facilitate the investigations of BCCI related matters, we took the unusual step of sending our own attorneys to the Southern District of Florida to prepare the request directed to some of these foreign countries.

Senator KERRY. When did that happen?

Mr. RICHARD. August 1991. Because the southern district repeatedly said they were not able to do it, we took it upon ourselves to send our own attorneys to do that. And we also sent attorneys to various parts of the world in an attempt to secure BCCI related records, whether in connection with this case or other cases.

So in connection with the handling of the subpoena issue, while I'm not familiar with what Mr. Lehtinen's testimony was this morning, I can assure you that in my familiarity with record, that we handled the matter essentially in an expeditious fashion designed to secure the records in the most efficient and effective manner. And I think the record is clear that we were, in fact, successful, at least in part.

Senator BROWN. I wonder if you would be willing, also, to review Mr. Lehtinen's testimony this morning and submit for the record an outline where you find yourself in disagreement with what he said, or you feel that the information is incomplete.

Mr. RICHARD. Certainly, I would be glad to do that, sir.

Senator BROWN. In just thinking about it, from my recollection of his testimony we were not advised that your approval was required in advanced of issuing the subpoenas of this kind. We were not advised that you did not give that approval.

There was an indication that, far from saying that you would not approve these things, that you simply did not respond. And I take it your testimony is that far from ignoring requests, that you specifically responded by saying, in some instances, you wanted to follow other courses.

Mr. RICHARD. Senator, I can assure you that a no response would have not been possible in the context of the BCCI investigation.

Senator BROWN. My impression was that he made repeated requests that these be enforced and could not get an answer other than the two countries where they were issued.

Senator KERRY. I thought he had said that they had been refused, or I thought he said he was turned down and he appealed to Richard. He said that you agreed to two of them.

Mr. RICHARD. Yes, I did. And the reason I approved those two, I was convinced that no additional alternative methods existed that were realistic.

Senator KERRY. I understand that. Were there subsequent requests to you for the enforcement of the subpoenas?

Mr. RICHARD. Senator, I don't recall dealing directly with Mr. Lehtinen. My recollection is I dealt with one of three senior managers, including his first assistant. And there was no disagree on how to proceed with respect to the balance. We were going in to the grand jury trying to pin down the records so that we would not be susceptible of a charge that we were on a fishing expedition.

They didn't know where the records were, what records they wanted. And we thought that, in order to make a credible case, that even if ultimately we had to go to enforcement, we needed this fact for presentation to our own courts. We could not appear that we were merely fishing.

Senator KERRY. Well let me just say that I know you by reputation, and you are an upstanding and solid Justice Department representative and law enforcement officer and I have no reason to question anything you are saying here.

I think the easiest thing to do, in my sense, is to get the record put together and sort it out. I am obviously concerned that a former U.S. Attorney has these feelings, and all of us are aware, in this process, that there are such things as departmental squabbles and differences of strategy and outlook and so forth. And if this is that, then so be it. I certainly want to look at it with a neutral eye and understand what happened.

And as I say, I know you by reputation and I have a high regard for you, so I do not have any question but that you are saying what happened from your perspective. And it would be helpful to the committee to sort out what was really requested here, and what ensued. And since I think there is such a documentation of those kinds of communications, that would be pretty helpful. That is my sense of it.

Mr. RICHARD. I'd be glad to try to try to put together this chronology which—I'll describe it as a chronology, and support it with any documents I have. If you wish to receive it now, I have a copy of our U.S. Attorneys manual that sets for the requirement.

Senator KERRY. I would be happy to take anything that would complement the record at this time.

Mr. RICHARD. I would be glad to submit it for the record.

Senator BROWN. I would be interested in knowing if you have a feel, off the top of your head, for what percent of Nova Scotia subpoena enforcement requests you approve? And is this something you approve 100 percent of what comes up or 5 percent of what comes up?

Mr. RICHARD. We try to negotiate them out, and frequently we're very successful because the foreign countries we go to know that

we have this in our hip pocket. The procedure we like to employ, and we find is frequently very effective, is to formally or informally approach the foreign government and indicate that we have this situation, it may not be covered by mutual legal assistance treaty. We need the records, we are prepared to send in rogatory requests, but we don't want to end up being rejected out of hand.

And hopefully, either through the good auspices of the country, the auspices of the bank, a compromise is accomplished and we get the records that we want in a very quick and expeditious fashion. When we litigate these cases—I mean, we're in one case out on the West Coast, it has been 2 years. So litigation is not frequently an expeditious route, even if we are ultimately successful.

So how many cases, I can't say. We don't regularly go to enforcement. Enforcement is a unique litigative judgment.

Senator BROWN. Your normal pattern is to negotiate it out first, which is what you did in this case.

Mr. RICHARD. In certain cases, certain countries, yes. For example, The UK, we were able to get the records. Other countries, we never secured sufficient data from the U.S. Attorneys Office in Miami in order to perfect it because, again, of this ambiguity as to what records were being sought, whether they were in the country that was in question. And my sense was that the records that were being produced through one form or another were satisfying the U.S. Attorney.

Now the thing that I find particularly disappointing is that having been in contact with the office on these issues—and the office, I can assure you, is well aware that if they are not satisfied with a response that there is an appellate avenue; if nothing else, myself to come to and say that it is not working. And that just didn't happen. When they came to me we resolved it what I believed to everybody's satisfaction.

Senator KERRY. Excuse me for interrupting you, but it seems sort of like it is leaping out at me and maybe Senator Brown feels the same way, but was there a level of breach of communication or of relationship, or of animosity or competition between main Justice and southern district in Florida that was somehow going in different directions here? Are we missing something?

Mr. RICHARD. Senator, the function of our Office of International Affairs is service. We're not in competition.

Senator KERRY. But somehow the U.S. Attorney might have had a different sense of the willingness of the Department to be doing something. I mean, look, I remember full well that this was in the high period of tension over BCCI and who was doing what. And there were questions of culpability and responsibility, and Bob Mueller came in to clean up the show.

And there may have been some tensions there as to who sensed or who wanted to be carrying the ball or something. I mean there are turf squabbles in these endeavors, and I am just wondering out loud whether that is something you perceive as having been at play here?

Mr. RICHARD. Again, from my vantage point I didn't see it. But I was not involved in the substantive handling and development of the case.

Senator KERRY. That is fine. I would just like to raise one issue with you while you are all here. I am not sure that any of you can answer it, but I want to raise it.

This morning one of the things Mr. Lehtinen said was that apparently on occasion a DOJ attorney would be called with respect to subpoena issue or something, and that subsequently a CIA person would contact them with respect to that particular subpoena or individual. Are you aware of that as a practice?

Mr. RICHARD. Certainly not as a practice, Senator.

Senator KERRY. Have you ever heard of that? Was there any instance where you have ever talked to CIA regarding?

Mr. RICHARD. If it was brought to my attention, I would have made inquiry as to why CIA was making such an inquiry. Because among my other duties is to oversee our so-called classified side of the house, and for the CIA to make such inquiries would be unique enough, in my judgment, to cause me to inquire of CIA what is going on.

Senator KERRY. Let me ask you a second issue. And again, I am confident this is not, but I want to bring it to your attention while the troops are here.

I wrote a letter recently to the Department request assistance. I wrote the Attorney General requesting the DOJ transmit a list of questions concerning the Banc de Commerce et Placement's Swiss authorities under the mutual legal assistance treaty. That we do so was specifically suggested to me by the Minister of Justice of Switzerland who said they would be glad to comply and to help out in that process.

In fact, in the letter returned to me by Mr. Rawls declining to do so, it says a congressional inquiry does not comply with the terms of the treaty, although the language of the treaty does not specifically preclude assistance on behalf of Congress.

You interpret it other than the Swiss authorities who suggested we do this. I am, you know, really taken aback that you send a letter—the Justice Department, not you specifically—saying, regrettably, the Department of Justice is unable to process your request under the MLAT when, in fact, the MLAT talks of investigations or court proceedings in respect of offenses the punishment of which falls, or would fall, within the jurisdiction of the judicial authorities of the requesting state.

Well, the punishment for the investigation of which this committee is involved in clearly falls within the jurisdiction of the Justice Department. It just seems to me such a narrow view of not willing to go to bat. And I said in the letter to the attorney general that the Swiss minister of justice himself suggested we do this. So I am truly confounded and disappointed.

Mr. RICHARD. I would be glad to review the letters. The traditional view, that I believe is strongly felt by the Swiss, was that the Swiss treaty did not apply to requests from legislative branches.

Senator KERRY. Agreed. And if I were to simply do it myself, claiming some right under the MLAT, I would not get it. But if you do it as part of a larger investigation that you are already involved in at our request, within the purview of your already conducted investigation.

Mr. RICHARD. The Swiss treaty would normally preclude us from giving you the information that they gave us. We would not be able to transmit it under a limitations of use article. But let me, Senator, make inquiry, because I am confused by the notion that the Swiss minister is now reversing what I always believed for 10 years was the Swiss position of no way.

I mean this is the position we have expressed, I think, to the Iran-Contra committees of both Houses and so forth, that the Swiss are adamant on this point and the treaty is not available for congressional inquiries.

Senator KERRY. Well, maybe that is something we ought to think about legislatively the next time MLAT is up.

Mr. RICHARD. Just bear in mind these are reciprocal.

Senator KERRY. I understand. But they are treaties, and we advise and consent. I raised this issue just the other day, on the next MLAT that we sit on in the Foreign Relations Committee, and I raised the issue of whether or not we should not create an amendment with respect to legislative. Because it does not seem to work very effectively. And there are certainly issues with respect to Panama and money laundering in other places, where we might want to raise those issues.

Let us, if we can, I think the way to clarify this rapidly—and I will guarantee you for the committee, and I know Senator Brown and I work well together and we are happy to do it—that if there is any point of clarification here that ought to be out there as a consequence of reviewing this material, the committee will put it out there. And we are not going to sit here and allow some factual error to become part of the record, but I do want to make certain that we are looking at the full record in order to make that kind of judgment.

Fair enough?

Mr. RICHARD. Fair enough.

Senator KERRY. Thank you for coming up here. We appreciate it. We will insert additional material for the record here pertaining to these issues as it arrives.

[The information referred to follows:]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA :

-v- :

BCCI HOLDINGS (LUXEMBOURG), S.A. :
BANK OF CREDIT AND COMMERCE :
INTERNATIONAL S.A. :
BANK OF CREDIT AND COMMERCE :
INTERNATIONAL (OVERSEAS) LIMITED :
INTERNATIONAL CREDIT AND INVESTMENT :
COMPANY (OVERSEAS) LIMITED :

Defendants :

Crim. No. 91-0655 (JHG)


RECEIVED

DEC 19 1991

NANCY L. MAYE, JR. CLERK

NOTICE OF FILING OF MEMORANDUM OF INTENT AND PLEA AGREEMENT


The United States of America, through its attorneys, the Assistant Attorney General, Criminal Division, Department of Justice, and the United States Attorney for the District of Columbia, respectfully files herewith a Memorandum of Intent and Plea Agreement in the above-titled case. .


ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
UNITED STATES DEPARTMENT OF JUSTICE


UNITED STATES ATTORNEY
FOR THE DISTRICT OF COLUMBIA

CERTIFICATE OF SERVICE

I hereby certify that I have caused a copy of the attached Notice of Filing of Memorandum of Intent and Plea Agreement, and the Memorandum of Intent and Plea Agreement, to be hand-delivered to counsel for the defendants, Eric Lewis, Nussbaum & Wald, One Thomas Circle, Suite 200, Washington, D.C., 20005.


JAY B. STEPHENS
UNITED STATES ATTORNEY
FOR THE DISTRICT OF COLUMBIA

12/19/91

Memorandum of Intent

This memorandum confirms the intent of the undersigned to enter into the Plea Agreement attached as Exhibit 1 hereto ("Agreement"), and to apply for and obtain all regulatory, judicial, and administrative consents, and to make whatever other filings, notices, applications are required to seek orders or approvals to be obtained in order for all parties to the Agreement to enter into and fully satisfy the obligations set forth in the Agreement.

In the event that either the U.S. District Court or the New York Supreme Court refuses to accept the Agreement, any payments by the Court Appointed Fiduciaries under the Interim Capitalization Plan set out in paragraph 8(a) shall be reimbursed to the Court Appointed Fiduciaries from funds forfeited from BCCI by the Department of Justice, and in the event that no such forfeiture takes place, from any fines collected by the Federal Reserve.


Agreed by the United States
and the People of the
State of New York

Department of Justice
Through:

People of the State of
New York

William P. Barr
Attorney General

By: 
George J. Fervilliger
Acting Deputy Attorney General

By: 
Robert H. Morgenthau
District Attorney
New York County

Agreed by Brian Smouha as one of the Commissaires of BCCI Holdings (Luxembourg) S.A., and Commissaire of Bank of Credit and Commerce International, S.A., not in his individual capacity.

By: 
Brian Smouha

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	:	
	:	
- v -	:	Crim No. 91-
	:	
BCCI HOLDINGS (LUXEMBOURG), S.A.	:	
BANK OF CREDIT AND COMMERCE	:	
INTERNATIONAL S.A.	:	
BANK OF CREDIT AND COMMERCE	:	
INTERNATIONAL (OVERSEAS) LIMITED	:	
INTERNATIONAL CREDIT AND INVESTMENT	:	
COMPANY (OVERSEAS) LIMITED	:	
	:	
Defendants.	:	

SUPREME COURT OF THE STATE OF
NEW YORK, COUNTY OF NEW YORK,
CRIMINAL TERM

PEOPLE OF THE STATE OF NEW YORK	:	
	:	
- v -	:	Ind 8090/91
	:	
BCCI HOLDINGS (LUXEMBOURG), S.A.	:	
BANK OF CREDIT AND COMMERCE	:	
INTERNATIONAL S.A.	:	
BANK OF CREDIT AND COMMERCE	:	
INTERNATIONAL (OVERSEAS) LIMITED	:	
INTERNATIONAL CREDIT AND INVESTMENT	:	
COMPANY (OVERSEAS) LIMITED	:	
et. al.,	:	
	:	
Defendants.	:	

PLEA AGREEMENT

Parties and Purpose

WHEREAS, the United States of America, by its attorneys for the United States Department of Justice (the "DOJ"), the People of the State of New York, by the District Attorney for New York

County, Robert M. Morgenthau (the "DANY") and Brian Smouha, Jacques Delvaux and Constant Franssens, as Commissaires of BCCI Holdings (Luxembourg) S.A. ("BCCI Holdings"); Brian Smouha, as Commissaire of Bank of Credit and Commerce International, S.A. ("BCCI SA"); Ian Wight and Robert Axford, as Joint Provisional Liquidators of Bank of Credit and Commerce International (Overseas) Ltd. ("BCCI Overseas"); and Ian Wight and Robert Axford as Joint Provisional Liquidators for International Credit and Investment Company (Overseas) Limited ("ICIC") (all such persons acting in the capacities so indicated or their duly appointed successors, being hereinafter collectively referred to herein as the "Court Appointed Fiduciaries"), have engaged in discussions with respect to the subject matter hereof pursuant to Rule 11 of the United States Federal Rules of Criminal Procedure, and, with respect to DANY, under New York law;

WHEREAS, the DOJ and the DANY have pursued investigations into the business and affairs of BCCI Holdings, BCCI SA, BCCI Overseas and ICIC (collectively, "BCCI"), which investigations have developed, for the benefit of law enforcement and regulatory agencies, significant evidence of criminal activity by the prior management of BCCI and both the DOJ and the DANY continue to pursue investigations into the impact of that activity;

WHEREAS, prior to July 5, 1991, BCCI had been a worldwide banking organization with operations in approximately 69 countries and on July 5, 1991 BCCI was closed by bank regulatory authorities

in the United Kingdom, the United States, the Cayman Islands, Luxembourg and elsewhere;

WHEREAS, BCCI is presently insolvent, and is subject to insolvency or liquidation proceedings pursuant to the laws of Luxembourg and the Cayman Islands and, in the case of certain agencies and branches of BCCI SA, are awaiting liquidation or in the process of being liquidated in the States of California and New York, and elsewhere;

WHEREAS, the failure of BCCI is likely to cause thousands of innocent depositors and other creditors throughout the world to suffer losses in the aggregate in billions of dollars;

WHEREAS, in order to address the foregoing, the Court Appointed Fiduciaries have been appointed to act as joint provisional liquidators and/or commissaires by courts in the respective domiciles of the BCCI companies to collect all BCCI assets located throughout the world, and liquidate the same for the purpose of achieving the greatest possible distribution to all lawful creditors and depositors of BCCI on a worldwide basis;

WHEREAS, in furtherance of the Court Appointed Fiduciaries' efforts, the Court Appointed Fiduciaries have filed a petition in Bankruptcy Court in the Southern District of New York under Title 11, Section 304 of the Bankruptcy Code seeking the turnover of all BCCI assets in the United States to the Court Appointed Fiduciaries (the "Section 304 Proceeding") and a Temporary Restraining Order has been issued in connection therewith;

WHEREAS, former management and operators of BCCI fraudulently and secretly acquired (1) direct or indirect ownership and control over the shares of First American Bankshares Inc., Washington, D.C. ("First American"), the former National Bank of Georgia, Atlanta, Georgia, and Independence Bank, Encino, California ("Independence Bank"), and (2) an interest in the former CentTrust Savings Bank, Miami, Florida ("CentTrust");

WHEREAS, the DOJ and federal banking regulators intend to minimize the risk of potential loss to the Bank Insurance Fund and United States taxpayers by obtaining a fund which could provide additional capital to depository institutions and safeguard the Bank Insurance Fund, if either are necessary, in connection with BCCI's secret investment in U.S. financial institutions;

WHEREAS, it appears that the identifiable assets of BCCI in the United States, exclusive of any stock ownership in First American and Independence Bank, constitute approximately \$550,000,000 in cash and other assets;

WHEREAS, the prior management and operators of BCCI are no longer involved in any effective decision-making capacity with BCCI, and its worldwide affairs are subject to the control of the Court Appointed Fiduciaries whom the DOJ, the DANY and the other parties hereto recognize, based upon various court appointments, as having full right and authority to act on behalf of BCCI and whom the DOJ and the DANY are willing to support in their efforts to collect and appropriately liquidate and distribute the assets of

BCCI in an orderly and fair manner, consistent with the protection of innocent victims of BCCI and the due administration of justice;

WHEREAS, responsible authorities in the United States, the United Kingdom, the Cayman Islands and Luxembourg desire that the assets of BCCI be distributed by the Court Appointed Fiduciaries only in a manner which (a) protects United States taxpayers from potential losses to the banking organizations illegally acquired by BCCI, (b) provides prompt recovery to innocent depositors, creditors and other victims of BCCI, and (c) ensures, as set forth herein, that no monies are paid to persons who have violated laws forbidding narcotics trafficking, terrorism, money laundering, crimes of violence or other acts generally recognized as felonies or similar crimes under the laws of the United States and other countries subscribing to recognized norms of international justice;

WHEREAS, pleas of guilty entered by the Court Appointed Fiduciaries, on behalf of BCCI, to substantial criminal charges in the United States will address significant U.S. law enforcement interests that the parties hereto believe, once the pleas provided for herein are entered and accepted by the relevant courts and all of the provisions of this Agreement are implemented as provided herein, will resolve all criminal investigations, charges, indictments and all criminal and civil proceedings against BCCI concerning matters occurring before July 5, 1991 subject to the terms and conditions set forth herein, thereby removing a major impediment and in fact facilitating the distribution of substantial

BCCI assets to innocent depositors, creditors and other victims of BCCI;

WHEREAS, in addition to the DOJ and the DANY, responsible international law enforcement and regulatory authorities in the United Kingdom, the Cayman Islands and Luxembourg also desire a resolution which balances interests in obtaining an appropriate penalty for illegal corporate conduct and compensation of innocent depositors, creditors and other victims of BCCI;

WHEREAS, the entry of pleas of guilty by the Court Appointed Fiduciaries, on behalf of BCCI, to criminal charges in the United States District Court for the District of Columbia (the "U.S. District Court") and the Supreme Court of the State of New York (the "N.Y. Supreme Court") as provided herein is not intended by the parties hereto to preclude the criminal prosecution of or any civil action against any culpable BCCI officers, employees, agents or other entities (other than BCCI) or wrongdoers;

WHEREAS, the parties believe that the entry of pleas of guilty by the Court Appointed Fiduciaries, on behalf of BCCI, to criminal charges as provided herein will materially assist in the prosecution of culpable persons and entities (other than BCCI) by permitting DOJ, DANY, and other enforcement authorities to obtain greater access to documents and witnesses through the full cooperation and assistance of the Court Appointed Fiduciaries.

NOW, THEREFORE, the United States of America through the DOJ, the DANY, the Board of Governors of the Federal Reserve System (the "Board of Governors"), the Federal Deposit Insurance

Corporation ("FDIC"), the Resolution Trust Corporation (the "RTC"), the Office of Thrift Supervision (the "OTS"), the Office of the Comptroller of the Currency (the "OCC"), the Securities and Exchange Commission ("SEC") the Superintendent of Banks of the State of New York ("N.Y. Banking"), the Superintendent of Banks of the State of California ("California Banking") and the Court Appointed Fiduciaries, with the assistance and support of the Serious Fraud Office of the United Kingdom (the "Serious Fraud Office"), the Public Prosecutor for Luxembourg, and the Attorney General of the Cayman Islands hereby covenant and agree as follows:

THE PLEAS

The Federal Plea

1. The Court Appointed Fiduciaries, acting on behalf of BCCI, will cause BCCI to waive venue and plead guilty in the U.S. District Court to the information, attached hereto as Exhibit A-1 (the "U.S. Information"), which charges BCCI with conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity in violation of 18 U.S.C. Sections 1962(c) and (d).

2. The Court Appointed Fiduciaries fully understand the nature and elements of the crimes with which BCCI has been charged in the U.S. Information.

3. The Court Appointed Fiduciaries will cause BCCI to plead guilty because, to the best of their knowledge, they have determined after due inquiry that acts of prior management of BCCI establish that BCCI, as the entity responsible for the acts

of such management, is in fact guilty of the charges contained in the U.S. Information and, in causing BCCI to plead guilty to the U.S. Information, the Court Appointed Fiduciaries, on behalf of BCCI, will accept the factual statements set forth in the U.S. Information and the conclusion of the DOJ that these statements provide a legally sufficient factual basis for the plea contemplated in paragraph 1 above.

The New York County Plea

4. The Court Appointed Fiduciaries, acting on behalf of BCCI, will cause BCCI to plead guilty in the N.Y. Supreme Court to counts one through six of New York County Indictment Number 8090/91 ("N.Y. Indictment") (Attached hereto as Exhibit A-2), it being expressly understood that the DANY will move to withdraw, as to BCCI only, at the time of the plea of guilty the second full paragraph of page 5 of said indictment, and the Court Appointed Fiduciaries will consent to that motion.

5. The Court Appointed Fiduciaries fully understand the nature and elements of the crimes with which BCCI has been charged in the N.Y. Indictment.

6. The Court Appointed Fiduciaries will cause BCCI to plead guilty because, to the best of their knowledge, they have determined after due inquiry that acts of prior management of BCCI establish that BCCI, as the entity responsible for the acts of such management, is in fact guilty of the crimes charged in counts one through six of the N.Y. Indictment as amended pursuant to paragraph 4 and, in causing BCCI to plead guilty to those

crimes, the Court Appointed Fiduciaries, on behalf of BCCI, accept that the factual statements set forth in counts one through six of the N.Y. Indictment provide a legally sufficient factual basis for the plea contemplated in paragraph 4 above.

7. The Court Appointed Fiduciaries, on behalf of BCCI, will join with the DANY's recommendation that, a fine of \$10,000,000 under the New York Penal Law section 80.15 be imposed, jointly and severally, on the corporate entities defined above as BCCI, payable as provided in paragraph 12 below.

FORFEITURE AND DISGORGEMENT

8.(a) Upon execution of this Agreement by the parties, the Court Appointed Fiduciaries will cause \$5,000,000 to be paid as an interim capitalization payment to Independence Bank (the "Interim Capitalization Payment") in exchange for newly issued shares of Independence Bank, which shares shall represent all the outstanding shares of Independence Bank. The shares to be issued pursuant to the Interim Capitalization Payment shall be issued in the name of one or more of the entities constituting BCCI herein and shall be subject to the divestiture Order of the Board of Governors of May 6, 1991 and placed in a trust to manage, control and sell Independence Bank, with an independent trustee to be selected by the Court Appointed Fiduciaries, which trust and trustee will be subject to the approval of the Board of Governors, California Banking, DOJ, and DANY, and subject to paragraph 9(b).

(b) Upon the filing of the U.S. Information, pursuant to 18 U.S.C. Section 1963(d)(1), the DOJ, on behalf of the United States, shall apply to the U.S. District Court with the consent of the Court Appointed Fiduciaries for an order directing that certain BCCI assets located in the United States, more fully described in Exhibit B, be paid into a custodial account maintained by the Treasury Department in a segregated account within the Department of Justice Seized Asset Deposit Fund in the name of the U.S. District Court (the "Custodial Account"). As proceeds from paragraphs 9(b) through (e) become available, the DOJ, on behalf of the United States, shall apply to the U.S. District Court with the consent of the Court Appointed Fiduciaries for appropriate orders effectuating the transfer of proceeds to the Custodial Account for disbursement. During the term of this Agreement, funds in the Custodial Account shall draw interest, which interest will accrue to the Custodial Account. Upon entry of the Forfeiture Order as provided herein, the Custodial Account will be transferred from the Seized Asset Deposit Fund to the Department of Justice Assets Forfeiture Fund. Notice of any payments and transfers relating to the Custodial Account shall be made to the parties by the Treasury Department.

9. Upon entry of a judgment of conviction on the U.S. Information and an order of forfeiture issued pursuant to 18 U.S.C. Sections 1963(a)(1), (2) and (3) (the "Forfeiture Order"), BCCI shall forfeit to the United States the following property of BCCI located in the United States:

(a) all of BCCI's ownership interest in deposits and other assets originally held in those banks and brokerage firms identified on Exhibit B hereto and then paid into the Custodial Account under paragraph 8(b),

(b) the net proceeds from the sale or other disposition or transfer of any stock, security or other interest in Independence Bank, but not the stock, security or other interest itself,

(c) the net proceeds from the sale or other disposition or transfer of any stock, security or other interest in First American, but not the stock, security or other interest itself,

(d) the balance of the liquidation estates of the Los Angeles and New York agencies of BCCI SA, but not the estates themselves, upon completion of liquidation proceedings conducted by the New York Banking and the California Banking in accordance with the laws of California and New York. For purposes of the foregoing, the "liquidation estates" shall consist of all of the rights and interests of the Superintendent of Banks of the states of New York and California under their respective state law banking statutes, with respect to the assets of BCCI S.A. located in their respective states and the assets of the New York and California agencies of BCCI S.A. The liquidation estates do not include the assets enumerated in Exhibit B, and

(e) the entirety of BCCI's interests in all other property, not identified in clauses 9(a) through (d), located in the United States, including, without limitation, real property and all tangible and intangible personal property.

10. In furtherance of the ongoing liquidation activities of the New York Banking and the California Banking, the New York Banking and the California Banking will attempt to complete their respective liquidations as soon as practicable consistent with their respective statutes and the determinations of their respective courts. Thereafter, they will transfer to the Custodial Account the United States' forfeiture interest in the entire remainder of the liquidation estates, as quickly as reasonably possible.

11. As promptly as practicable after the entry of the Forfeiture Order and, to the extent possible, pending the completion of any proceedings that may be required under 18 U.S.C. Section 1963(1), disbursements shall be made from the Custodial Account to a U.S. Disgorgement, Compensation and Penalty Fund maintained by the Treasury Department within the Department of Justice Assets Forfeiture Fund (the "U.S. Fund") and, subject to paragraphs 13, 14, and 17 below, to a Worldwide Victims and Creditors Compensation Fund maintained by the Court Appointed Fiduciaries (the "Worldwide Victims Fund") as follows:

(a) subject to clause (d) below, the first \$100,000,000 deposited in the Custodial Account shall be disbursed to the U.S. Fund for the purposes set forth in paragraph 12;

(b) the next \$100,000,000 deposited in the Custodial Account shall be disbursed to the Worldwide Victims Fund;

(c) subsequent deposits to the Custodial Account shall be concurrently disbursed in equal amounts to the U.S. Fund and the Worldwide Victims Fund, except that monies due to the U.S. Fund shall be paid without regard to delays, if any, under paragraph 13(a);

(d) prior to the disbursements described in clauses (a) through (c) of this paragraph 11, the Interim Capitalization Payment described in paragraph 8(a) shall be refunded to the Court Appointed Fiduciaries.

12. As determined in the sole discretion of the Attorney General of the United States (the "Attorney General"), the U.S. Fund shall be used for the following purposes:

(a) to minimize the risk of potential loss to the Bank Insurance Fund of the FDIC and United States taxpayers by providing additional capital, upon the request of the FDIC, OCC and the Board of Governors, to the subsidiary banks of First American, and Independence Bank, or to reimburse the Bank Insurance Fund for any losses it incurs in connection with the sale or disposition of these institutions; provided, however, that when all said institutions are sold or otherwise disposed of an amount equal to any such capital infusion or insurance fund payment shall first be repaid to the U.S. Fund, with the balance of the net proceeds of the sale or disposition paid in equal amounts through the

Custodial Account to the U.S. Fund and the Worldwide Victims Fund;

(b) within one week of the entry of the Order of Forfeiture, the Court Appointed Fiduciaries shall apply for remission, and the Attorney General will remit as soon as available \$10,000,000 out of funds deposited in the U.S. Fund pursuant to paragraph 11(c) above for the sole purpose of paying the fine imposed or to be imposed upon BCCI in the N.Y. Supreme Court pursuant to paragraph 7 of this Agreement; it being understood and agreed that the distribution set forth under this paragraph shall take precedence over all other distributions from the U.S. Fund, obtained under paragraph 11(c), unless there is written consent otherwise of both the Attorney General and the DANY;

(c) to satisfy a punitive forfeiture in an amount to be determined in the sole and absolute discretion of the Attorney General;

(d) to compensate the DOJ for the reasonable costs of investigation and prosecution of BCCI and any former employees, officers or agents of BCCI, or other individuals who assisted its criminal activities;

(e) to compensate the DANY for the reasonable costs of its investigation and prosecution of BCCI and continued investigation of the activities of former employees, officers or agents of BCCI, should DANY make an application for equitable sharing;

(f) for restitution to victims of BCCI, which may include remission to the Court Appointed Fiduciaries in accordance with 18 U.S.C. Section 1963(g) for the purpose of facilitating an increase in assets available for distribution by the Court Appointed Fiduciaries to innocent worldwide victims of BCCI, and which may include claims related to the failure of CentTrust, if any;

(g) to reimburse the Board of Governors, FDIC, RTC, OTS, OCC, SEC for the reasonable costs of their investigations of, and civil and administrative proceedings against BCCI and related persons and entities.

(h) to take other appropriate measures as authorized pursuant to 18 U.S.C. Sections 1963(f) and (g).

The DOJ will notify DANY of disbursements from the U.S. Fund.

13. Disbursements to the Worldwide Victims Fund are conditioned on availability of funds under paragraph 11, establishment of a screening mechanism under paragraph 14, and, as provided in clause (a) below, the cooperation requirements of paragraphs 17 and clauses 21(c) and (e). The amounts payable to the Worldwide Victims Fund shall be paid every 15 days beginning as soon as practicable after entry of the Forfeiture Order in increments of \$50,000,000 (or such lesser amounts as are available) until all funds are paid unless:

(a) DOJ or DANY have filed written notice with the Court Appointed Fiduciaries specifying the details of a violation of or a failure to comply with paragraph 17, or in

the case of an alleged violation of or failure to comply with clauses (c) and (e) of paragraph 21, upon similar written notice filed by the DOJ with the Court Appointed Fiduciaries, in which case payments will be deferred until the parties resolve any dispute over such cooperation. Any dispute not resolved by the parties within 10 days of such notification may be referred by any party to the District Court for resolution. Upon resolution of any objection under this section, transfers will resume promptly as provided above.

(b) During the pendency of any delay by virtue of objections under clause (a) above, interest which accrues on these funds held in the Custodial Account shall accrue to the benefit of the Worldwide Victims Fund and shall be payable at the same time as and together with the principal to which it relates.

14. Prior to the transfer of funds to the Worldwide Victims Fund pursuant to paragraph 13, the Court Appointed Fiduciaries shall have established an international screening mechanism acceptable to the DOJ and DANY that assures, consistent with the laws of the countries governing the distribution of the Worldwide Victims Fund by the Court Appointed Fiduciaries, that such funds will be distributed only to innocent depositors, creditors and other victims of BCCI whose claims are not derived directly or indirectly through violations of United States or other laws concerning narcotics, terrorism, money laundering, crimes of violence, or other acts generally recognized as

felonies or similar crimes under the laws of countries subscribing to recognized norms of international justice. The screening mechanism shall, where appropriate, incorporate participation of the Bank of England, the Serious Fraud Office, the Public Prosecutor of Luxembourg, and the Attorney General of the Cayman Islands and the assistance of the United States Federal Bureau of Investigation and the DANY.

15. In the unlikely event that funds in the Worldwide Victims Fund and funds otherwise available to the Court Appointed Fiduciaries exceed the amount required for full compensation of the innocent depositors, creditors and other victims of BCCI described in paragraphs 14 above, the excess funds will be returned to the United States for deposit into the U.S. Fund and distribution as contemplated in paragraph 12 above.

MISCELLANEOUS PROVISIONS

16. The parties hereto agree to assist each other in effectuating the Forfeiture Order and taking whatever action may be reasonably necessary to protect the interests of the parties hereto in the property ordered forfeited, including, without limitation, identifying and collecting BCCI assets and causing the transfer thereof to the Custodial Account, promptly addressing claims and objections to the Forfeiture Order filed by third parties pursuant to 18 U.S.C. Sections 1963(g) and/or 1963(l) and, subject to the terms of this Agreement, transferring funds to the U.S. Fund and the Worldwide Victims Fund as provided herein.

17.(a) The Court Appointed Fiduciaries agree to cooperate fully with the DOJ and the DANY in their ongoing investigations and related proceedings concerning BCCI and BCCI related activities, individuals and entities, to the fullest extent allowed under applicable United States and foreign law.

(b) As used in this paragraph:

(i) "investigative information" includes documents, records, tangible evidence or other information concerning BCCI and related activities, individuals and entities requested by DOJ or DANY.

(ii) "production" of investigative information means to obtain access to, provide originals of where practicable, make and provide copies of, and permit use of such information, as specified by the requesting party.

(c) In the event that the Court Appointed Fiduciaries conclude that production of investigative information violates a relevant and applicable foreign law, the Court Appointed Fiduciaries will promptly:

- (i) notify the requesting party detailing the legal prohibition or limitation to production, access, copying or other use of said information;
- (ii) comply, in as complete a form as possible,

with the request, in a manner that does not result in a violation of the asserted foreign law inhibition; and

(iii) take such reasonable steps, including seeking appropriate waivers from appropriate persons and entities, and making applications or joining in applications made by the requesting party, at the discretion of the requesting party, to appropriate courts or other bodies to attempt to meet the foreign legal requisites necessary to permit compliance or overcome the foreign legal barriers inhibiting compliance.

(d) Cooperation hereunder includes, but is not limited to the following, consistent with clauses (a), (c), and (e) through (g) herein:

(i) The Court Appointed Fiduciaries agree to produce to the DOJ and the DANY any investigative information that is subject to the control of the Court Appointed Fiduciaries.

(ii) The Court Appointed Fiduciaries agree to use their good offices, when requested by either the DOJ or the DANY, to facilitate production of investigative information in the custody or control of third parties.

(iii) At the request of the DOJ or the DANY, the Court Appointed Fiduciaries will direct any

employee or other person subject to their control to testify in any duly convened grand jury, court, or other criminal, investigative, or administrative proceeding, and will, in addition, use their good offices and, at the expense of the DOJ, all reasonable efforts to persuade former employees, clients, and shareholders of BCCI, and others to cooperate with the requesting party and to testify in any such proceeding.

(iv) The Court Appointed Fiduciaries agree to waive any privileges, including the attorney-client, accountant-client, and work product privileges, with respect to any investigative information existing as of July 5, 1991.

(v) The Court Appointed Fiduciaries further agree to provide investigative information created after July 5, 1991 to the DOJ and the DANY relating to the tracing and locating of assets that flowed from or to BCCI and BCCI related entities and persons as a result of criminal activity.

(e) With respect to investigative information created after July 5, 1991, it is not the intent of this Agreement to require the Court Appointed Fiduciaries to waive the attorney client privilege in connection with documents or communications reflecting or containing legal advice to the Court Appointed Fiduciaries or attorney work product related

thereto or otherwise pertaining to the subject matter of their appointments.

(f) Where investigative information is requested that:

(i) was created after July 5, 1991,

(ii) was created for the purpose of negotiating settlement of specific creditor or depositor claims, and

(iii) would, in the opinion of the Court Appointed Fiduciaries, pose a substantial risk of jeopardizing the specific negotiations or materially interfere with the lawful performance of their fiduciary obligations, the Court Appointed Fiduciaries will so inform the requesting party and provide the requesting party an estimate of how long the perceived inhibition to disclosure would persist, and will pursue, if requested by the requesting party, efforts, including resort to an appropriate judicial body, to permit the disclosure of the requested information under circumstances that will preserve confidential and secure treatment of the information and avoid the risk of interference noted above.

(g) The DOJ agrees to assume the reasonable costs of obtaining production of the foregoing for the DOJ and the

DANY, upon advance notice of the approximate cost and a statement of the reasons why such production is necessary.

18. As part of the sentence imposed in connection with the entry of the pleas contemplated in paragraphs 1 and 4 above, the Court Appointed Fiduciaries agree that BCCI shall be barred from doing business within the United States except upon written notice to the DOJ and the express written permission of the appropriate Department or Agency of the United States, and with respect to doing business within the State of New York, except upon the further written notice to the DANY and the express written permission of the New York Banking, and with respect to business in the State of California, except upon the express written permission of California Banking. This provision is not intended to limit the activities of the Court Appointed Fiduciaries, pursuant to their respective court or other appointments, within the United States, in connection with the liquidation of BCCI. Additionally, before any person, other than the Court Appointed Fiduciaries, is appointed to act in a trustee or fiduciary capacity affecting assets located in the State of New York, the approval of the DANY and the New York Banking shall be obtained, and with respect to assets in California, the approval of California Banking shall be obtained.

19. The Court Appointed Fiduciaries will obtain, with the assistance of DOJ and DANY where appropriate, all regulatory, judicial, administrative or other filings, notices, applications, consents, orders or approvals required to be obtained in order

for the Court Appointed Fiduciaries, on behalf of BCCI, to satisfy fully their obligations under this Agreement, including seeking any necessary modification of the Temporary Restraining Order, the Court Appointed Fiduciaries' request for a preliminary injunction in the Section 304 Proceeding and/or the Consent Order entered in connection with the 304 Proceeding on October 16, 1991.

20. The Court Appointed Fiduciaries agree to:

(a) consent to the assessment in the amount claimed in the civil monetary penalty action brought by the Board of Governors against BCCI on July 29, 1991; and

(b) comply with the Divestiture Orders issued by the Board of Governors on March 4, 1991 and May 6, 1991 (the "Board Orders").

The Board of Governors agrees to stay and not seek execution of that assessment against any property forfeited under this Agreement or located outside the United States and to not file any claim for this assessment in the New York or California BCCI SA liquidations or in any liquidation proceeding involving BCCI in Luxembourg, the Cayman Islands or elsewhere.

21. Subject to paragraph 20, the Board of Governors, FDIC, RTC, OTS, OCC and the New York and California Banking agree to forego additional civil monetary penalty and other similar damage actions wherein they seek funds from or make claims against the Worldwide Victims Fund, the liquidation estates in the New York

and California liquidation proceedings for BCCI S.A., and foreign assets and liquidation estates of BCCI, except as follows:

(a) The FDIC, RTC, OTS, OCC and New York and California Banking specifically reserve their ability, as conservators, liquidators and receivers, and potential conservators, liquidators and receivers, to file compensatory claims in the foreign liquidation process, in accordance with the appropriate foreign law. Provided, however, that if Independence Bank and First American are sold or otherwise disposed of without loss to the Bank Insurance Fund, the FDIC will not file any such claim.

(b) Further, the FDIC, RTC, OTS, OCC, New York Banking and California Banking further reserve their ability on behalf of U.S. financial institutions acting as such or in their corporate capacity, or acting as a conservator, liquidator or receiver to pursue civil contract claims.

(c) Additionally, the Board of Governors and joint issuers of the Board of Governors Orders may enforce the Board's Orders or subsequent orders issued by them in connection with the required divestiture of BCCI's interests in First American or Independence Bank.

(d) The SEC agrees to forgo any enforcement action against BCCI related to the acquisition and sale of stock and other securities in connection with the financial institutions described in the U.S. Information.

(e) The Court Appointed Fiduciaries also agree to cooperate with the Board of Governors, FDIC, RTC, OTS, OCC, and SEC in

their investigations of BCCI-related wrongdoing, and in related proceedings, in the manner described in paragraph 17 above.

(f) The Court Appointed Fiduciaries release any and all claims which they may have against the Board of Governors, FDIC, RTC, OTS, OCC, SEC, New York Banking and California Banking for actions taken in their respective regulatory capacities.

(g) Nothing in this Agreement bars New York Banking or California Banking from recovering their administrative expenses from their respective liquidation proceedings, in accordance with their respective state laws.

22. The United States and the DANY agree that, should the U.S. District Court and the N.Y. Supreme Court accept the pleas contemplated in paragraphs 1 and 4 above, and should the U.S. District Court enter the Forfeiture Order all pending criminal charges heretofore brought against BCCI by either of them shall be concluded and neither will bring any additional criminal charges against BCCI for matters occurring before July 5, 1991.

23. Pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, the parties agree that the specific sentence, including the Forfeiture Order, set forth in this Agreement provides the appropriate disposition of this case and that the parties will ask the Court to enter a Judgment of Conviction and issue a Forfeiture Order consistent with this Agreement within 10 days of the entry of the pleas in this case, considering that time is of the essence (or such other date as

the U.S. District Court may set). If the U.S. District Court accepts the agreed sentence including the forfeiture as set forth above, the Court Appointed Fiduciaries, on behalf of BCCI, may not withdraw the plea contemplated in paragraph 1 above as a matter of right under Federal Rule of Criminal Procedure 11(e) (2) and (4). The Court Appointed Fiduciaries, on behalf of BCCI, understand that the Forfeiture Order of the U.S. District Court is enforceable both as a part of the sentence and in the same manner as a civil judgment. Should the judge refuse to accept the forfeiture aspect of the sentence, this Agreement shall become null and void and no party will be bound hereto.

24. The Court Appointed Fiduciaries and their attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to induce the Court Appointed Fiduciaries to enter a plea of guilty on behalf of BCCI. The Court Appointed Fiduciaries understand that failure to abide by any term of the Agreement is a violation of the Agreement and may render it null and void or result in such sanction as may be determined by the U.S. District Court or N.Y. Supreme Court. The Court Appointed Fiduciaries further agree this Agreement shall be filed and become a part of the record in the U.S. District Court and the N.Y. Supreme Court.

25. The parties hereto understand and agree that all of the agreements contained herein shall be conditional on each such agreement and if, for any reason, the U.S. District Court, the

N.Y. Supreme Court, or any other United States court of competent jurisdiction shall find any provision of this Agreement to be unenforceable, this Agreement may become null and void, at the option of either the DOJ, DANY and Court Appointed Fiduciaries, and no party hereto will be bound hereto.

26. This Agreement may be executed in one or more identical counterparts, whether transmitted by telecopier or otherwise. Each such counterpart shall be deemed to be an original for purposes of this Agreement.

27. This Agreement sets forth the entire understanding of the parties hereto with respect to the subject matter hereof. Except as explicitly set forth in this Agreement, there are no representations, warranties, or inducements - oral, written, expressed or implied - that in any way affect the validity of this Agreement or any of its terms. All prior negotiations, oral and written, are merged in this Agreement. Evidence of such negotiations, including prior drafts, shall not be admissible for any purpose in any proceeding related to this Agreement or its performance. Any amendments shall be with the mutual, written consent of the parties.

28. This Agreement shall be governed by and construed in accordance with the laws of the United States of America, except with respect to the matters contemplated in paragraph 4 through 7 hereof which, only to the extent necessary, shall be construed in accordance with applicable New York law.

29. The Court Appointed Fiduciaries agree to a tolling of any applicable statute of limitations as to criminal matters related to BCCI during the term of this Agreement and for 90 days thereafter.

WAIVER OF TRIAL RIGHTS

30. The Court Appointed Fiduciaries have read the charges against BCCI contained in the U.S. Information and the N.Y. Indictment, and those charges have been fully explained to them by their attorneys.

31. The Court Appointed Fiduciaries understand that in accordance with federal law, 18 U.S.C. Section 3013, upon entry of judgment of conviction, BCCI will be assessed \$50 for each count, in addition to any other penalty imposed pursuant to this Agreement. Similarly, the Court Appointed Fiduciaries understand that in accordance with New York law, Penal Law Section 60.35, each of the pleading corporate entities upon entry of judgment of conviction, will be assessed a \$100 mandatory surcharge and a \$2 crime victim assistance fee, in addition to any other penalty imposed.

32. The Court Appointed Fiduciaries understand that by entering a guilty plea on behalf of BCCI, they surrender certain rights under federal and New York State law, including the following:

(a) If BCCI persisted in a plea of not guilty to the charges against it, BCCI would have the right to a public and speedy trial. The trial could be either a jury trial or

a trial by the judge sitting without a jury. BCCI has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, BCCI, under New York law, and BCCI, the government and the judge, under federal law, all must agree that the trial be conducted by the judge without a jury.

(b) In the federal and New York prosecutions, if the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. BCCI and its attorney would have an opportunity to seek the removal of prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The respective juries would have to agree unanimously before it could return a verdict of either guilty or not guilty, as to each count of the U.S. Information and the N.Y. Indictment. The respective juries would be instructed that BCCI is presumed innocent, and that it could not convict BCCI unless, after hearing all the evidence, it was persuaded of BCCI's guilt beyond a reasonable doubt, and that it was to consider each count of the U.S. Information and the N.Y. Indictment separately.

(c) If BCCI and the government waive the right to a jury trial, the appropriate court after hearing all the evidence, and considering each count separately, would determine whether or not it was persuaded of BCCI's guilt

beyond a reasonable doubt in connection with the U.S. Information and the N.Y. Indictment.

(d) At a federal and New York state trial, whether by a jury or a judge, the prosecution would be required to present its witnesses and other evidence against BCCI. BCCI would be able to confront those prosecution witnesses and its attorney would be able to cross-examine them. In turn, although it would not be obligated to do so, BCCI could require the attendance of its witnesses within the territorial jurisdiction of the United States through the subpoena power of the court, or in connection with the N.Y. Indictment, as provided under New York law.

(e) BCCI would have the right to have the charges outlined in the U.S. Information brought by indictment upon the concurrence of not less than 12 members of a grand jury, comprised of at least 16 and not more than 23 persons, that there is probable cause for the charges.

(f) Should the plea to the U.S. Information occur prior to entry of the guilty plea to the New York Indictment, the Court Appointed Fiduciaries waive any defense to the N.Y. Indictment based upon the New York State Double Jeopardy law in order to permit the guilty plea to the New York State Indictment to be entered as provided herein.

33. The Court Appointed Fiduciaries, on behalf of BCCI, understand that by entering a plea of guilty as provided herein, the Court Appointed Fiduciaries, on behalf of BCCI, are waiving

all the rights set forth in the prior paragraph. The Court Appointed Fiduciaries' attorneys have explained those rights to the Court Appointed Fiduciaries, and the consequences of the waiver of those rights as contemplated herein. The Court Appointed Fiduciaries understand that they are waiving all appellate issues that might have been available if they had exercised its right to trial.

34. Upon imposition of the sentence contemplated herein, the DOJ will move to dismiss the remaining charges against BCCI currently pending in any U.S. District Court.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of December 19th, 1991.

Agreed by United States,
and the People of the
State of New York:

By:

Department of Justice

Through:

People of the State of
New York

By:

William P. Barr
Attorney General

By *George J. Terwilliger*
George J. Terwilliger
Acting Deputy Attorney General

Robert M. Morgenthau
District Attorney
New York County

By *Robert S. Mueller III*
Robert S. Mueller III
Assistant Attorney General
Criminal Division

By *Shirley D. Peterson*
Shirley D. Peterson
Assistant Attorney General
Tax Division

By *Stuart M. Gerson*
Stuart M. Gerson
Assistant Attorney General
Civil Division

And the following
United States Attorneys:

Jay B. Stephens
Jay B. Stephens
District of Columbia

Joe D. Whitley
Joe D. Whitley
N.D. Georgia

Robert W. Genzman
Robert W. Genzman
M.D. Florida

Lourdes G. Baird
C.D. California

Otto G. Obermaier
S.D. New York

Dexter W. Lehtinen
Dexter W. Lehtinen
S.D. Florida

Agreed by United States,
and the People of the
State of New York:

By:

Department of Justice

Through:

William P. Barr
Attorney General

By _____
George J. Terwilliger
Acting Deputy Attorney General

By _____
Robert S. Mueller III
Assistant Attorney General
Criminal Division

By _____
Shirley D. Peterson
Assistant Attorney General
Tax Division

By _____
Stuart M. Gerson
Assistant Attorney General
Civil Division

And the following
United States Attorneys:

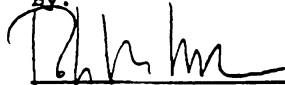
Jay B. Stephens
District of Columbia

Robert W. Genzman
M.D. Florida

Otto G. Obermaier
S.D. New York

People of the State of
New York

By:



Robert M. Morgenthau
District Attorney
New York County

Joe D. Whitley
N.D. Georgia

Lourdes G. Baird
C.D. California

Dexter W. Lehtinen
S.D. Florida

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State of New York:

By:

Department of Justice

Through:

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New York

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Attorney General

Robert M. Morgenthau
District Attorney
New York County

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Criminal Division

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Shirley D. Peterson
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Tax Division

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N.D. Georgia

Louder G. Baird
Louder G. Baird
C.D. California

Dexter W. Lehtinen
Dexter W. Lehtinen
S.D. Florida

Agreed by Court Appointed Fiduciaries
By:

BUT IN THE NAME AND ON
BEHALF OF THE COMPANY BY
AUTHORITY OF THE COURT AND
WITHOUT PERSONAL LIABILITY

Handwritten initials: JH f

COMMISSAIRES OF BCCI HOLDINGS
(LUXEMBOURG) S.A., not in their
individual capacities ^(x)

[Signature]
Brian Smouha

[Signature]
Jacques Delvaux

[Signature]
Constant Franssens

COMMISSAIRE OF BANK OF CREDIT
AND COMMERCE INTERNATIONAL, S.A.,
not in his individual capacity ^(x)

[Signature]
Brian Smouha

JOINT PROVISIONAL LIQUIDATORS OF BANK
OF CREDIT AND COMMERCE INTERNATIONAL
(OVERSEAS) LTD., and INTERNATIONAL
CREDIT AND INVESTMENT COMPANY
(OVERSEAS) LTD., not in their
individual capacities ^(x)

[Signature]
Ian Wight

[Signature]
Robert Axford

Agreed by U.S. Regulators:

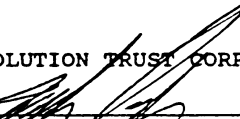
BOARD OF GOVERNORS OF THE FEDERAL
RESERVE SYSTEM

By: 
WILLIAM W. WILES
SECRETARY

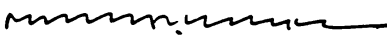
FEDERAL DEPOSIT INSURANCE
CORPORATION

By: 
WILLIAM TAYLOR
CHAIRMAN

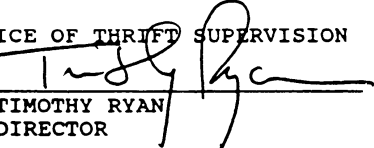
RESOLUTION TRUST CORPORATION

By: 
WILLIAM TAYLOR
CHAIRMAN

OFFICE OF THE COMPTROLLER OF
THE CURRENCY

By: 
ROBERT L. CLARKE
COMPTROLLER OF THE CURRENCY

OFFICE OF THRIFT SUPERVISION

By: 
TIMOTHY RYAN
DIRECTOR

SECURITIES AND EXCHANGE COMMISSION

By: 
RICHARD C. BREEDEN
CHAIRMAN

Agreed by New York State Regulators:

SUPERINTENDENT OF BANKS OF
THE STATE OF NEW YORK, in his
capacity as Liquidator of
the New York Agency of Bank
of Credit & Commerce
International, S.A.

By:

Name:

Title:

By:

JAMES E. GILLERAN

SUPERINTENDENT OF BANKS OF STATE
OF CALIFORNIA, As Such and As
Liquidator of California Property
and Business of Bank of Credit
and Commerce International, S.A.

Agreed by California State Regulators:

SUPERINTENDENT OF BANKS OF STATE OF
CALIFORNIA, As Such and As Liquidator
of California Property and Business of
Bank of Credit and Commerce
International, S.A.


JAMES E. GILLERAN
SUPERINTENDENT

<u>BANK/BROKER</u>	<u>APPROXIMATE AMOUNT</u>	<u>DESCRIPTION</u>
		8900051531; 19054500; 8900054840; 8109803155; and 8109292983
Doha Bank Ltd. New York, New York	\$ 500,308	(Account Number Unknown)
Bank of California New York, New York	\$ 1,283,093	(Account Number Unknown)
Capital Bank Miami Miami, Florida	\$ 24,215 \$ 946,485 \$ 3,053,641 \$ 1	Acct. # 902205102 Acct. # 0902205110 Cert. # 085-0053580 Acct. # 902204122
First Florida Bank N.A. Tampa, Florida	\$15,000,000	Capital Equiv. Deposit (Account Number Unknown)
First National Bank of Louisville Louisville, Kentucky	\$ 2,650,936	Acct. # 70328615
Manufacturers Hanover Trust Company New York, New York	\$ 40,000	(Account Number Unknown)
Blunt Ellis & Loewi Inc./ Kemper Securities Group Inc. Chicago, Illinois	\$ 550,000	Acct. # 1278-4388
Mabon Securities Inc. New York, New York	\$ 2,601,793	Acct. # 04-4050
Oppenheimer & Co., Inc. New York, New York	\$ 2,919,400 \$15,802,870 \$ 6,184,803	Acct. # 05391184 Client Acct. # 05391180 Client Acct. # 05391180
Paine Webber New York, New York	\$ 68,876	(Account Number Unknown)
Bank of New York New York, New York	\$ 637,105	Acct. # 180676

EXHIBIT B

<u>BANK/BROKER</u>	<u>APPROXIMATE AMOUNT</u>	<u>DESCRIPTION</u>
American Express Bank Ltd. New York, New York	\$60,255,910	Ref. # 16211581 (From Acct. # 703876)
	\$31,793,704	Acct. # 703876 (Includes Offsets)
	\$30,009,792	Acct. # 53074 (From Acct. # 703876)
	\$12,027,031	Acct. ## 53066; 353066; 53173; 353173; 53165; 353165; 698316; 714758; 53116; 52977; 352977; 705517; 3705517; and 711036
	\$12,444,311	Brokerage Account - Deposit (Includes Offsets) (Account Number Unknown)
BankAmerica International New York, New York	\$60,229,053 \$4,529,622	Acct. # 48586052 Acct. ## 86047; 86041; and 86078
Citibank, N.A. New York, New York	\$11,064,150 \$ 4,402 \$ 1,181,398 \$ 537,000	Acct. # 36054705 Acct. # 36060398 Custody (Account Number Unknown) Ref. # 089543
Security Pacific International Bank New York, New York	\$10,000,000 \$ 3,818,994 \$19,157,884	Deal Ref. # 57976 Acct. # 07012001 Acct. ## 3005016; 4011022; 4012039; 4018017; 4020023; 4020030; 4020101; 4027001; 4031016; 5007001; 5008001; 5009001; 5011001; and 5012001
Bank of New York New York, New York	\$ 1,805,141 \$ 300,055 \$ 310,911 \$ 33,058 \$ 152,373 \$12,848,323	Acct. # 895.018856 Acct. # 890.0054.301 Acct. # 890.0054.328 Acct. # 890.0054.794 Acct. # 890.0054.921 Acct. ## 200.418; 8109803821; 8109298752; 19689500; 8900053399;

<u>BANK/BROKER</u>	<u>APPROXIMATE AMOUNT</u>	<u>DESCRIPTION</u>
		8900051531; 19054500; 8900054840; 8109803155; and 8109292983
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Bank of California New York, New York	\$ 1,283,093	(Account Number Unknown)
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	\$30,009,792	Acct. # 53074 (From Acct. # 703876)
	\$12,027,031	Acct. ## 53066; 353066; 53173; 353173; 53165; 353165; 698316; 714758; 53116; 52977; 352977; 705517; 3705517; and 711036
	\$12,444,311	Brokerage Account - Deposit (Includes Offsets) (Account Number Unknown)
BankAmerica International New York, New York	\$60,229,053	Acct. # 48586052
	\$4,529,622	Acct. ## 86047; 86041; and 86078
Citibank, N.A. New York, New York	\$11,064,150	Acct. # 36054705
	\$ 4,402	Acct. # 36060398
	\$ 1,181,398	Custody (Account Number Unknown)
	\$ 537,000	Ref. # 089543
Security Pacific International Bank New York, New York	\$10,000,000	Deal Ref. # 57976
	\$ 3,818,994	Acct. # 07012001
	\$19,157,884	Acct. ## 3005016; 4011022; 4012039; 4018017; 4020023; 4020030; 4020101; 4027001; 4031016; 5007001; 5008001; 5009001; 5011001; and 5012001
Bank of New York New York, New York	\$ 1,805,141	Acct. # 895.018856
	\$ 300,055	Acct. # 890.0054.301
	\$ 310,911	Acct. # 890.0054.328
	\$ 33,058	Acct. # 890.0054.794
	\$ 152,373	Acct. # 890.0054.921
	\$12,848,323	Acct. ## 200.418; 8109803821; 8109298752; 19689500; 8900053399;

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA)

v.)

Criminal No. 91-0655 (JHG)

BCCI HOLDINGS (LUXEMBOURG), S.A.,)

BANK OF CREDIT AND COMMERCE)

INTERNATIONAL S.A.,)

BANK OF CREDIT AND COMMERCE)

INTERNATIONAL (OVERSEAS) LIMITED,)

INTERNATIONAL CREDIT AND INVESTMENT)

COMPANY (OVERSEAS) LIMITED,)

Defendants.)

FILED

JAN 24 1992

CLERK, U.S. DISTRICT COURT,
DISTRICT OF COLUMBIA

ORDER OF FORFEITURE

The United States of America and the four corporate defendants in this case (collectively, "BCCI") have entered into a Plea Agreement dated December 19, 1991, by which the defendants agree to plead guilty to an offense under Title 18, United States Code, Section 1962, and to forfeiture of the assets of the four corporate defendants located in the United States pursuant to Section 1963 of Title 18.

As recited on the record today in open court, the Court has determined pursuant to Rule 11(e), Federal Rules of Criminal Procedure, that the Plea Agreement is acceptable to the Court. The Court has determined pursuant to Rule 11(f), Federal Rules of Criminal Procedure, that there is a factual basis for the pleas of guilty and for the forfeiture of the defendants' assets as set forth in the Superseding Information, the Plea Agreement, the statements of counsel in open Court, and the testimony of the representative of the defendants.

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Pursuant to Title 18, United States Code, Sections 1963(a)(1), (a)(2), and (a)(3), the following property located in the United States of the four corporate defendants is hereby condemned and forfeited to the United States of America:

(a) the deposits and other assets listed on Exhibit A, which Exhibit A is hereby made a part of this Order, except those funds listed on Exhibit A which are held by American Express Bank Ltd., Bank of California, Capital Bank Miami, and Oppenheimer & Co., Inc., because counsel have been unable at this time to reconfirm or update the list of assets held by those institutions. Counsel for the parties to this case shall provide to the Court, by January 29, 1992 at 12:00 noon, an updated list of forfeitable assets held by American Express Bank Ltd., Bank of California, Capital Bank Miami, and Oppenheimer & Co., Inc., at which time, upon approval by the Court, such assets shall become subject to this Order of Forfeiture.

(b) the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in Independence Bank, but not the stock, security or other interest itself;

(c) the net proceeds from the future sale or other disposition or transfer of any stock, security or other interest in First American Bankshares, Inc., but not the stock, security or other interest itself;

(d) the balance of the liquidation estates of the Los Angeles and New York agencies of BCCI, S.A., but not the estates themselves, upon completion of liquidation proceedings conducted by the New York banking and the California banking entities in accordance with the laws of California and New York. For purposes of the foregoing, the "liquidation estates" shall consist of all of the rights and interests of the Superintendent of Banks of the states of New York and California under their respective state law banking statutes with respect to the assets of BCCI, S.A. located in their respective states and the assets of the New York and California agencies of BCCI, S.A. The liquidation estates do not include the assets enumerated in Exhibit A; and

(e) the entirety of BCCI's ownership interests in all other property located in the United States, including, without limitations, real property and all tangible and intangible personal property, however held, whether subsequently identified, determined or discovered pursuant to paragraph 10 of the Plea Agreement, in the course of the ongoing liquidation proceedings described therein or otherwise identified, determined, or discovered in any manner at any time, but not property that may be brought into the United States by or on behalf of Court Appointed Fiduciaries of BCCI in the course of the management or disbursement of the liquidation estates as described in the Plea Agreement.

2. The Court finds that the above-listed forfeited assets constitute interests acquired or maintained by the defendants, in violation of Title 18, United States Code, Section 1962; or are

interests in, securities of, claims against, or property or contractual rights of various kinds affording a source of influence over an enterprise which the defendants established, operated, controlled, conducted, or participated in, in violation of Title 18, United States Code, Section 1962; or are property constituting or derived from, proceeds the defendants obtained, directly or indirectly, from racketeering activity, in violation of Title 18, United States Code, Section 1962.

3. It is further ORDERED that, except as specifically excepted in paragraph 1(a) and as noted in paragraph 4, each of the financial institutions and entities listed on Exhibit A shall immediately pay to the United States Marshal for the District of Columbia or his duly authorized representative:

- 1) the entire contents of the accounts listed on Exhibit A, including interest accrued;
- 2) any funds transferred since July 5, 1991, from any account listed on Exhibit A that are still within the possession or control of the financial institution, regardless of the account into which those funds were transferred and regardless of the reason for the transfer; and
- 3) any other funds in any other account held by BCCI (Overseas) or International Credit and Investment Company (Overseas).

Such payments shall not be limited to the "Approximate Amounts" listed on Exhibit A if the balance as of this date is greater than the Approximate Amount. For the purposes of this paragraph, an

"account listed on Exhibit A" includes any account that previously held funds listed on Exhibit A, or any account to which such funds have been transferred.

4. With respect to the funds listed on Exhibit A as being held on deposit in the Court Registry Investment System ("CRIS"), interest-bearing account administered by the United States District Court for the Southern District of Texas, such funds are hereby ORDERED forfeited to the United States. In lieu of the immediate transfer of those funds pursuant to paragraph 3, the United States shall take all necessary steps pursuant to Title 28, United States Code, Section 2042, to obtain an order directing the transfer of those funds to the United States Marshal for the District of Columbia.

5. It is further ORDERED that to the extent necessary to carry out the terms of this Order, BCCI, pursuant to the Plea Agreement, shall assist the financial institutions and entities listed on Exhibit A in the transfer of such funds.

6. It is further ORDERED that the United States Marshal's Service shall deposit all funds received pursuant to this Order of Forfeiture in the Department of Justice Seized Asset Deposit Fund Account (hereafter, "the Account") and invest it with interest as permitted by Title 28, United States Code, Section 524(c), as amended October 28, 1991.

7. Pursuant to the ancillary hearing procedures set forth in Title 18, United States Code, Section 1963(1), no disbursements shall be made from the Account without further Order of this Court.

Should it appear that no claim has been made with respect to particular assets transferred to the Account pursuant to Section 1963(1), or at such time as such claims to such assets have been resolved, the Court will entertain motions from the government for the disbursement of those assets.

8. As the proceeds identified in paragraphs 1(b) through (e) become available, the Department of Justice, on behalf of the United States, shall apply to this Court for appropriate Orders effecting the transfer and deposit of such proceeds into the Account. The notice provisions of Section 1963(1) shall apply to each asset so transferred to the Account pursuant to such further Orders.

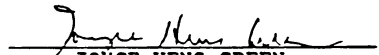
9. Pursuant to Rule 32(b)(2), Federal Rules of Criminal Procedure, it is further ORDERED that each of the above listed properties, except as specifically excepted in paragraph 1(a) and as noted in paragraph 4, shall be seized forthwith by the United States Marshal for the District of Columbia or his duly authorized representative and disposed of in accordance with the law and this Order of Forfeiture.

The Clerk is hereby directed to send copies of this Order to all counsel of record and the United States Marshal.

IT IS SO ORDERED.

Entered this 24th day of January, 1992.

6


JOYCE HENS GREEN
United States District Judge
United States District Court
for the District of Columbia
A TRUE COPY

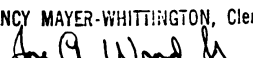
NANCY MAYER-WHITTINGTON, Clerk
By 
Deputy Clerk

EXHIBIT A

Account No. -----	Account Name -----	Approx. Balance -----
Bank of New York		New York
018872-500	BCCI (Overseas) Barbados	202,708.55
8109803821	BCCI (Overseas) Barbados	101,108.90
019054-500	BCCI (Overseas) Bombay	3,245,017.16
8109803155	BCCI (Overseas) Bombay	851,642.06
8900054840	BCCI (Overseas) Bombay	159,383.66
018856-500	BCCI (Overseas) Cayman	1,834,405.29
8109292983	BCCI (Overseas) Cayman	50,919.08
8900051531	BCCI (Overseas) Cayman	745.86
8900053658	BCCI (Overseas) Cayman	0.00
8900054301	BCCI (Overseas) Cayman	300,027.55
8900054328	BCCI (Overseas) Cayman	310,849.60
8900054794	BCCI (Overseas) Cayman	33,057.60
8900054921	BCCI (Overseas) Cayman	152,093.70
019089-500	BCCI (Overseas) Panama	8,016,979.39
8109298752	BCCI (Overseas) Panama	144,240.44
8900053399	BCCI (Overseas) Panama	386,467.59
** Subtotal **		15,789,646.43
Citibank		New York
36054705	BCCI (Overseas)	11,064,150.00
36060398	BCCI (Overseas)	4,402.00
Custody Account	BCCI (Overseas)	1,181,398.00
Custody Acct 089543	BCCI (Overseas)	537,000.00
** Subtotal **		12,786,950.00
Court Registry Investment System		S.D. Tex.
86078	BCCI (Overseas) Macau	109,112.75
86047	BCCI (Overseas) Muscat	4,339,738.83
86052 ¹	BCCI S.A. - Abu Dhabi	60,563,405.50
86041	BCCI (Overseas) Seoul	80,770.71
** Subtotal **		81,709,103.07
Doha Bank Ltd.		New York

¹ This account contains additional funds not subject to forfeiture. Only the amount specified, plus interest accrued since July 18, 1991, is subject to forfeiture.

55804511	BCCI (Overseas)	500,308.00
First Florida		Tampa
440-757-7116	Capital Equiv. Dep.	15,299,703.58
First National Bank of Louisville		Louisville
70328615	BCCI (Overseas)	3,727,520.97
Hufstedler, Kaus & Ettinger		Los Angeles
Intermagnetics Trust Acct		487,448.84
Kemper Security		Chicago
1278-4388	BCCI (Overseas)	583,305.00
Mabon Securities		New York
04-4050	BCCI (Overseas)	2,661,808.53
Manufacturers Hanover		New York
(none)	BCCI (Overseas)	40,240.00
Paine Webber		New York
DN-R5056-01	BCCI (Overseas)	73000.00
Security Pacific Intl		New York
05007001	BCCI (Overseas) Abidjan	3,305,447.05
07012001	BCCI (Overseas) Cayman	4,124,193.31
04020101	BCCI (Overseas) Istanbul	1,723,590.57
04020023	BCCI (Overseas) Izmir, Turkey	308,079.19
04011002	BCCI (Overseas) Karachi	3,056,794.59
05011001	BCCI (Overseas) Khartoum	701,251.94
04012039	BCCI (Overseas) Manila	783,178.47
04020030	BCCI (Overseas) Mersin, Turkey	116,667.53
05008001	BCCI (Overseas) Monrovia	103,500.48
03005016	BCCI (Overseas) Paris, France	857,082.72
04018017	BCCI (Overseas) Seoul, Korea	5,714,329.75
04031016	BCCI (Overseas) Shenzhen China	589,044.22
05009001	BCCI (Overseas) Sierra Leone	2,056,883.83
04027001	BCCI (Overseas) Sri Lanka	1,818,758.32
05012001	BCCI (Overseas) Togo	104,511.45
** Subtotal **		25,363,313.42

Security Pacific National**New York**

607750471	BCCI (Overseas) Abu Dhabi	1,785,845.00
607750491	BCCI (Overseas) Abu Dhabi	44,500,000.00
** Subtotal **		46,285,845.00
** Total		\$188,692,117.56

The following accounts and approximate amounts are as they appear on Schedule B of the Plea Agreement but have not been reconfirmed or updated by counsel:

American Express Bank Ltd. New York, New York	\$60,255,910	Ref. # 16211581 (From Acct.#703876)
	\$31,793,704	Acct. #703876 (Includes Offsets)
	\$30,009,792	Acct. #160300 ² (From Acct.#703876)
	\$12,027,031	Acct. ## 53066; 353066; 53173; 353173; 53165; 353165; 698316; 714758; 53116; 52977; 352977; 705517; 3705517;and 711036
	\$12,444,311	Brokerage Account- Deposit (Includes Offsets) (Account Number Unknown)
Bank of California New York, New York	\$ 1,283,093	(Account Number Unknown)
Capital Bank Miami Miami, Florida	\$ 24,215 \$ 946,485 \$ 3,053,641 \$ 1	Acct. #902205102 Acct. #0902205110 Cert. #085-0053580 Acct. #902204122
Oppenheimer & Co., Inc. New York, New York	\$ 2,919,400 \$15,802,870 \$ 6,184,803	Acct. #05391184 Client Acct. #05391180 Client Acct. #05391180
**Total	\$176,745,256	

² This account contains additional funds not subject to forfeiture. Only the amount specified plus interest accrued since July 5, 1991 is subject to forfeiture.

United States District Court

for the District of Columbia

UNITED STATES OF AMERICA

V.

#1-BCCI HOLDINGS (LUXEMBOURG), S.A.

(Name of Defendant)

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Criminal

Case Number: 91-0655

Michael Nussbaum, Esquire

Defendant's Attorney JAN 24 1992

THE DEFENDANT:

- ☒ pleaded guilty to ~~counts~~ the Superseding Information filed 12/19/91. CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA
- ☐ was found guilty on count(s) _____ after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
18 USC 1962(c) & 1962(d)	Racketeering	From in or about January of 1978, to in or about July of 1991	1
18 USC 2	Aiding & Abetting	From in or about January of 1978, to in or about July of 1991	1

The defendant is sentenced as provided in ~~pages 2 through 6 of the attached Order of Forfeiture~~ the attached Order of Forfeiture. The sentence is imposed pursuant to the Sentencing Reform Act of 1984..

- ☐ The defendant has been found not guilty on count(s) _____ and is discharged as to such count(s).
- ☒ ~~Counts~~ Original Indictment filed 11/15/91 (is) ~~are~~ dismissed on the motion of the United States.
- ☒ It is ordered that the defendant shall pay a special assessment of \$ 200.00 for ~~2000(s)~~ Superseding Information, which shall be due ~~on or before 60 days~~ within 60-days.

IT IS FURTHER ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. The Court imposed no additional fine.

Defendant's Soc. Sec. No.: _____

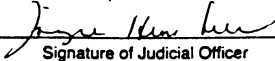
Defendant's Date of Birth: _____

Defendant's Mailing Address: _____

Defendant's Residence Address: _____

January 24, 1992

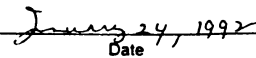
Date of Imposition of Sentence



Signature of Judicial Officer

Joyce Hens Green - U.S. District Judge

Name & Title of Judicial Officer



Date

y.

Criminal No. 91-0655 (JHG)

BCCI HOLDINGS (LUXEMBOURG), S.A.,
BANK OF CREDIT AND COMMERCE
INTERNATIONAL, S.A.,
BANK OF CREDIT AND COMMERCE
INTERNATIONAL (OVERSEAS) LIMITED,
INTERNATIONAL CREDIT AND INVESTMENT
COMPANY (OVERSEAS) LIMITED.

Defendants.

FILED

JAN 31 1992

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

On January 24, 1992, this Court, following findings of fact and conclusions of law with supporting reasons made in open court, accepted the pleas of guilty of the four corporate defendants (collectively, "BCCI") and the plea agreement between them and the United States of America. Thereupon, an Order of Forfeiture was entered directing the United States Marshal Service to seize certain assets forthwith. The Order of Forfeiture also provided that upon receipt of an updated and verified list of forfeitable assets held by American Express Bank Ltd., Bank of California Corp., Capital Bank, and Oppenheimer & Co., Inc. (hereafter, the "list"), and upon approval by the Court of the list, the assets attributed to those four institutions would become subject to the Order of Forfeiture and should then be seized forthwith.

Pursuant to the Court's Order of Forfeiture of January 24, 1992, counsel for the United States filed a "First Supplemental List of Forfeited Property" which, according to the United States,

reflected the verification of the amounts previously listed on page four of Exhibit A to the Court's January 24, 1992 Order of Forfeiture. Accompanying the list was a brief memorandum advising the Court of certain matters pertaining to the First Supplemental List.

It should be noted from the outset that, among the numerous filings received by the Court, the names of certain entities holding assets have not always been consistently or correctly referred to. For example, in certain submissions, Capital Bank has been referred to as "Capital Bank Miami." In addition, American Express Bank Ltd. has sometimes been referred to as "American Express," Oppenheimer & Co., Inc. has been mentioned as "Oppenheimer & Co.," and ICIC Investments Ltd. has been listed as "ICIC Investment Ltd." On this date the names of institutions contained in lists submitted with the Court have been clarified and, by this Order, the Court amends all past incorrect references to those entities.

In its memorandum accompanying the First Supplemental List, the United States advised the Court, inter alia, that although the amounts and numbers of the accounts held by Capital Bank have been confirmed with the account holder, the Comptroller of the State of Florida, Capital Bank has declined to provide direct confirmation of that information without further Order of this Court. Because the account holder has confirmed the accuracy of the amount and numbers of the accounts held by Capital Bank, and because the defendants in this case do not challenge the forfeitability of the

assets attributed to Capital Bank in the First Supplemental List, the Court finds additional confirmation by Capital Bank unnecessary.

In addition to the United States' representations concerning assets held by Capital Bank, the memorandum accompanying the First Supplemental List also advises the Court that on January 28, 1992, in the course of confirming account information with Oppenheimer & Co., Inc., it was learned that an account or accounts at that institution, numbered 05391180, are held in the name of ICIC Investments Ltd. and not in the name of any of the four corporate defendants. The United States alleges that although not specifically listed in the name of any of the defendants in this case, the assets held in the account or accounts numbered 05391180 are nonetheless the assets of the corporate defendants and are subject to forfeiture pursuant to paragraph 1(e) on the January 24, 1992.

Although the government asserted this position in its most recent filing, after discussion at a hearing held this date, the United States proposed, and counsel for the court-appointed fiduciaries agreed, that there should be a period of time before those assets were forfeited in which the government could make a detailed investigation to determine whether or not it was entitled to those funds contained in account or accounts numbered 05391180. Pursuant to its proposal, the government moved for entry of an order restraining the movement or other disposition of any assets held in the name of ICIC Investments Ltd. at Oppenheimer & Co.,

Inc. as well as at other institutions. The BCCI defendants consented to the motion. Since the action is deemed appropriate, prudent, and in the public interest, the Court has issued a separate Order granting the government's motion. Accordingly, those amounts in account or accounts named ICIC Investments Ltd. and numbered 05391180 at Oppenheimer & Co., Inc. will not be forfeited at this time.

Therefore, it is hereby

ORDERED that the assets listed on the attached pages entitled "First Supplemental List of Forfeited Property" are declared forfeited and subject to this Court's Order of Forfeiture of January 24, 1992.


It is FURTHER ORDERED that all references to account or accounts numbered 05391180, Oppenheimer & Co., Inc., contained in Exhibit A attached to the Court's Order of Forfeiture of January 24, 1992 are stricken and those accounts named ICIC Investments Ltd. and numbered 05391180 presently held by Oppenheimer & Co., Inc. shall not be forfeited pending further Order of this Court.

It is FURTHER ORDERED that, in addition to those assets ordered forfeited by the January 24, 1992 Order of Forfeiture, and pursuant to Rule 32(b)(2), Federal Rules of Criminal Procedure, the assets listed in the "First Supplemental List of Forfeited Property" attached hereto shall be seized forthwith by the United States Marshal Service or its duly authorized representative and disposed of in accordance with the law.

It is FURTHER ORDERED that all references to "American Express," "Capital Bank Miami," "ICIC Investment Ltd.," and "Oppenheimer & Co." are hereby amended to read "American Express Bank Ltd.," "Capital Bank," "ICIC Investments Ltd.," and "Oppenheimer & Co., Inc." respectively.

The Clerk of the Court is hereby directed to send copies of this Order to all counsel of record and the United States Marshal.

IT IS SO ORDERED.
Entered this 31th day of January, 1992.


JOYCE HENS GREEN
United States District Judge

First Supplemental List of Forfeited Property

Account No. -----	Account Name -----	Balance -----
American Express Bank Ltd.		New York
1509800	Union National Bank	30,832,640.32 ¹
1605800	BCCI	61,629,475.21
703876	BCCI S.A. - Abu Dhabi	8,818,703.73
703876 ²	BCCI S.A. - Abu Dhabi	23,037,303.36
Brokerage Deposit	BCCI (Overseas)	12,681,119.10 ³
3/53066	BCCI (Overseas) Chittigong	610,940.61
3/53165	BCCI (Overseas) Dhaka	4,305,427.70
3/53173	BCCI (Overseas) Dakar	734,692.31
698316	BCCI (Overseas) Karachi	353,870.68
3/705517	BCCI (Overseas) Lahore	4,222,444.79
714758	BCCI (Overseas) Macau	247,751.59
Suspense Deposit	BCCI (Overseas) Macau	1,336,863.84
3/52977	BCCI (Overseas) Nairobi	606,571.81 ⁴
53116	BCCI (Overseas) Seoul	335,246.63
3/711036	BCCI (Overseas) Seychelles	358,297.24
** Subtotal **		150,111,348.92
Bank of California Corp.		New York
91212381	BCCI Mali	1,283,092.84

¹ This account contains an additional amount of approximately \$236,653.45 not presently subject to forfeiture. Only the amount specified plus interest from January 28, 1992, is presently subject to forfeiture.

² This account is divided into two parts to reflect offsets taken by American Express from account 703876.

³ This amount includes a \$500,000 offset taken by American Express.

⁴ This account contains an additional amount of approximately \$82,000 not presently subject to forfeiture. Only the amount specified plus interest from January 28, 1992, is presently subject to forfeiture.

Capital Bank**Miami**

850053580
 902204122
 902205102
 902205110

3,053,641.00
 1.00
 24,215.00
 946,485.00

**** Subtotal ******4,024,342.00****Oppenheimer & Co., Inc.****New York**

05391184

BCCI (Overseas)**2,991,107.70**

We stand adjourned.

[Whereupon, at 6:05 p.m., the hearing adjourned, to reconvene subject to the call of the Chair.]

APPENDIX

DEPOSITION OF EDWARD M. ROGERS, JR.

MONDAY, MARCH 16, 1992

Deposition of EDWARD M. ROGERS, JR., a witness herein, called for examination by counsel for the Committee Staff, pursuant to notice, in Room S-116, The Capitol, commencing at 1:50 p.m., the witness having been duly sworn by MARK T. EGAN, a Notary Public in and for the District of Columbia, and the proceedings being taken down by Stenomask by MARK T. EGAN, and transcribed under his direction.

MARK T. EGAN,

Notary Public in and for the District of Columbia.

My commission expires: 1-31-94.

ADDENDUM

April 8, 1992

[On April 3, 1992, counsel for Mr. Rogers advised the Subcommittee that, "Mr. Rogers did not meet with Mr. Raphael in March 1991 or in March 1992. The last time Mr. Rogers met with Mr. Raphael was in December 1991 or January of this year."]

APPEARANCES

On behalf of the Committee:

JONATHAN M. WINER, ESQ., Legislative Assistant/Counsel, Senator Kerry
DAVID McKEAN, ESQ., Legislative Assistant/Counsel, Senator Kerry
CARTER PILCHER, Legislative Assistant, Senator Brown

On behalf of the Witness:

ANNETTE M. CAPRETTA, ESQ.
JONATHAN D. SCHILLER, ESQ.
Donovan Leisure,
Rogovin, Huge & Schiller
1250 24th Street, NW
Washington, DC 20037-1124

PROCEEDINGS

Whereupon, EDWARD M. ROGERS, JR., the witness herein, was called for examination by counsel for the Committee Staff and, having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR COMMITTEE STAFF

Mr. McKEAN. Could you give your full name, your age, and your current employment.

Mr. ROGERS. I am an attorney. I'm 34 years old.

Mr. McKEAN. Where were you educated?

Mr. ROGERS. In Alabama, University of Alabama. It's where I got my J.D.

Mr. SCHILLER. David, Ed would just like to make a brief statement for you, on the record, with your permission.

Mr. McKEAN. Sure.

Mr. ROGERS. I've been invited here today to state on the record what I've stated informally to the Committee Staff in the past. I am happy to do so. There are allegations in the press questioning my legal representation of Sheikh Kamal Adham last year. I wish to make clear to this committee that my representation of Mr. Adham was in all respects lawful, ethical, and in full compliance with the Ethics in Government Act.

I left my position at the White House in early August of 1991 to form the law firm of Barour & Rogers with my good friend Haley Barbour. Haley and I have a law practice in which we advise a number of clients on a variety of matters. I was first retained to represent Mr. Adham in late August of last year after I had left my position at the White House and established the new law firm. At no time during my tenure at the White House did I have any contact with Mr. Adham or anyone on his behalf.

In fact, I had never heard of Mr. Adham before I was contacted about his representation. In late August, after I was in the private practice, Mr. Adham's attorney inquired if I would consider, if we would consider being part of his team of legal advisers. Prior to agreeing to the representation, I made general inquiries of Mr. Adham and learned that he had been well regarded and well known.

In early September Mr. Adham retained the services of my law firm. My written agreement to represent Mr. Adham which you have expressly provides that as part of the legal team, my law firm and I would not do any lobbying, PR or political work. My law firm did no lobbying, public relations, or political work on his behalf.

At no time during my firm's representation of Mr. Adham did I contact anyone in the White House or the Justice Department about Mr. Adham, or on matters on which the firm represented him. I want to make those points clear to the Committee and we have copies of this.

Mr. SCHILLER. Thank you. Good afternoon.

Mr. PILCHER. Thank you. I'm Carter Pilcher with Senator Brown.

Mr. SCHILLER. Jonathan Schiller with Mr. Rogers.

Mr. ROGERS. I am Ed Rogers in Mr. Brown's chair.

Mr. PILCHER. Good. Good to see you.

Mr. McKEAN. Where were you admitted to the bar?

Mr. ROGERS. Alabama and Washington.

Mr. McKEAN. What year were you admitted to the bar?

Mr. ROGERS. 1985 I think in both places; it might be 1986 for DC.

Mr. McKEAN. And before joining your current firm, had you ever practiced law?

Mr. ROGERS. Just briefly. I was with a family firm in 1985 in Birmingham.

Mr. McKEAN. I want to take one line of questioning a little bit out of sequence here, but if you'll just bear with me. On October 28 of last year you wrote a letter to Boyden Gray and you indicated at that time that you were willing to cooperate with an inquiry into your representation of Kamal Adham, are you familiar with that letter?

Mr. ROGERS. Sure.

Mr. McKEAN. Did anyone at the White House ever ask you to write that letter?

Mr. ROGERS. No.

Mr. McKEAN. Did you prepare that letter with the assistance of an attorney?

Mr. ROGERS. Yes, I did. My partner worked on that letter with me.

Mr. McKEAN. At the time did you believe the representations made in that letter were accurate?

Mr. ROGERS. Yes.

Mr. McKEAN. Do you still believe they are accurate?

Mr. ROGERS. Yes, generally so. There is a question in there about when I was plural at one point which you raised before.

Mr. SCHILLER. I think that just so the record is clear, there's a word "officials" and there was a question in the interview as to whether it was officials or official, and I believe that Mr. Rogers cleared that up to the best of his ability in that interview with you.

Mr. McKEAN. Did you subsequently meet with counsel Boyden Gray?

Mr. ROGERS. No.

Mr. McKEAN. Did lawyers from the White House counsel's office contact you?

Mr. ROGERS. Yes.

Mr. McKEAN. Do you remember their names?

Mr. ROGERS. I talked with John Schmitz and I talked with Gregg Walden.

Mr. McKEAN. Did you meet with these individuals?

Mr. ROGERS. I talked with them on the phone.

[Witness confers with counsel.]

Mr. McKEAN. How many conversations did you have with these two?

Mr. ROGERS. I can't say precisely, maybe four, total.

Mr. McKEAN. Four with both of them on the line?

Mr. ROGERS. No, it would have been two and two, or maybe three with Gregg and one with John, something like that.

Mr. McKEAN. When did you begin work at the White House?

Mr. ROGERS. Right after the election, but during the—inauguration day I guess.

Mr. McKEAN. What was your title at the White House?

Mr. ROGERS. Deputy Assistant to the President and Executive Assistant to the Chief of Staff.

Mr. McKEAN. Did you gain a new title as your tenure at the White House continued?

Mr. ROGERS. I was political director for a time, but that was informally. It wasn't an additional formal title.

Mr. McKEAN. What were your responsibilities at the White House?

Mr. ROGERS. I was responsible for much of John Sununu's paper flow, information back and forth to the staff, and as political director, I managed the political office of the White House.

Mr. McKEAN. You reported to Governor Sununu?

Mr. ROGERS. Yes.

Mr. McKEAN. To anyone else?

Mr. ROGERS. No.

Mr. McKEAN. How often did you meet with Governor Sununu?

Mr. ROGERS. Daily, frequently.

Mr. PILCHER. This was while you were in the White House?

Mr. SCHILLER. Yes.

Mr. ROGERS. Yes.

Mr. McKEAN. And did you typically attend meetings at the White House that involved—tell me the kinds of meetings that you would attend in the White House?

Mr. ROGERS. I would attend meetings that were often held in Governor Sununu's office or staff meetings where there were multiple staff members present. I can't say with any more precision than that. It all depends on what was topical at the time.

Mr. McKEAN. Did you meet with major contributors to the Republican Party?

Mr. ROGERS. Yes.

Mr. McKEAN. Did you attend meetings where policy was discussed?

Mr. ROGERS. With contributors or separate?

Mr. McKEAN. Separate.

Mr. ROGERS. Sure. Sometimes there would be policy matters.

Mr. SCHILLER. You are limiting yourself to which party, the Republican Party did you say, contributors?

Mr. McKEAN. Yes. Did you ever sit in on any meetings with the President?

Mr. ROGERS. Yes.

Mr. McKEAN. On how many occasions?

Mr. ROGERS. Numerous occasions. I couldn't fix a number to it.

Mr. McKEAN. So it's fair to say that the President knew you?

Mr. ROGERS. Yes.

Mr. WINER. Let me go back and clarify one thing. When you were asked the question did you attend meetings at the White House that involved Republican contributors and to which you answered yes. Just for the record, did you attend meetings at the White House that involved major Democratic Party contributors?

Mr. ROGERS. Not that I know of, but I don't know to what degree some of these people may or may not have given money to Democrats, as well.

Mr. McKEAN. When did you decide to leave the White House?

Mr. ROGERS. In January of 1991.

Mr. McKEAN. What prompted your decision to leave?

Mr. ROGERS. My wife graduated from law school. I had been there however long I had been there, 2 years, and wanted to go into the private sector. I had been married just less than 2 years. She was going to finish night school, so I was going to go into the private sector.

Mr. McKEAN. When did you tell Governor Sununu that you would be leaving?

Mr. ROGERS. The first part of January.

Mr. McKEAN. When did you officially notify, or was that an official notification at that time?

Mr. ROGERS. Yes.

Mr. McKEAN. Did you have any contact at the White House during any period of time with anyone regarding BCCI, First American?

Mr. ROGERS. No, never.

Mr. McKEAN. When did you actually leave the White House. What was the date?

Mr. ROGERS. August, the first week of August.

Mr. McKEAN. Can you be more precise?

Mr. ROGERS. I'd hate to be more precise, it was like the 4th or the 5th, something like that. I don't remember the exact date.

Mr. McKEAN. When did you begin at Haley & Rogers?

Mr. ROGERS. Barbour & Rogers. Just immediately after I left the White House.

Mr. McKEAN. You didn't take a break?

Mr. ROGERS. No.

Mr. McKEAN. How did you first come to know the name Kamal Adham?

Mr. ROGERS. When I met with, when Samir Darwish called and asked if I would meet with his attorney, in late August, the first time I was familiar with his name.

Mr. McKEAN. How do you know Samir Darwish?

Mr. ROGERS. He is the manager of the Grand Hotel, just on and off over the years, I've met him from being around the hotel and events at the hotel.

Mr. McKEAN. So how often would you say that you went to the Grand Hotel when you were working at the White House?

Mr. ROGERS. Once every couple of weeks.

Mr. McKEAN. Have you socialized with Mr. Darwish away from the hotel?

Mr. ROGERS. No. I've been to a dinner maybe he was at, but no, not really.

Mr. McKEAN. Do you know who owns the Grand Hotel?

Mr. ROGERS. Yes.

Mr. McKEAN. Who?

Mr. ROGERS. Joe Yazbek.

Mr. McKEAN. Do you know Mr. Yazbek?

Mr. ROGERS. Yes.

Mr. McKEAN. When did you first meet him?

Mr. ROGERS. I met him back in 1989, early in 1989.

Mr. McKEAN. Has he ever been to the White House, Mr. Yazbek?

Mr. ROGERS. Yes. Yes.

Mr. McKEAN. Meetings with you or with Governor Sununu?

Mr. ROGERS. Meetings with Governor Sununu.

Mr. McKEAN. On what issue?

Mr. ROGERS. On Lebanon. On general events on Lebanon. He has been there with the former first lady of Lebanon, Mrs. Maoui.

Mr. McKEAN. Are you aware that—who was the lawyer for Mr. Adham?

Mr. ROGERS. Moussa Raphael.

Mr. McKEAN. And do you know whether or not Mr. Raphael represents Mr. Yazbek?

Mr. ROGERS. I believe he does.

Mr. McKEAN. Who told you that?

Mr. ROGERS. Either I've learned it through Moussa or through Samir. I don't know how I learned it.

Mr. McKEAN. When was the last time you spoke to Mr. Darwish?

Mr. ROGERS. Last week.

Mr. McKEAN. Last week. Did you discuss your pending deposition with him?

Mr. ROGERS. Well, yes. He had called because Jonathan had called him.

Mr. PILCHER. Jonathan Winer?

Mr. ROGERS. No, Jonathan Schiller.

Mr. McKEAN. When was the last time you spoke to Mr. Yazbek?

Mr. ROGERS. It's been weeks, not recently.

Mr. McKEAN. Since your decision to represent Mr. Adham?

Mr. ROGERS. Yes, yes, since then.

Mr. McKEAN. So you came in contact with Mr. Raphael when Mr. Darwish called you and asked you if you would come to meet with him, is that correct?

Mr. ROGERS. That's when I came to talk with him about representing Sheikh Kamal.

Mr. McKEAN. Did you make any other inquiries with anybody else about representing Mr. Adham?

Mr. ROGERS. Yes.

Mr. McKEAN. Who were those individuals?

Mr. ROGERS. After talking with Mr. Raphael.

Mr. McKEAN. After talking with Samir Darwish and Moussa Raphael?

Mr. ROGERS. I talked with Sandy Charles and with Sam Bamieh.

Mr. McKEAN. Can you spell Bamieh?

Mr. ROGERS. B-a-m-i-e-h.

Mr. McKEAN. Since your interview in our offices, have you talked to either Mr. Bamieh or Ms. Charles?

Mr. ROGERS. I heard from Sam Bamieh after someone here—perhaps you or Jon talked to him, but I haven't heard from Sam, no.

Mr. PILCHER. Who is Sam Bamieh?

Mr. McKEAN. We are going to discuss that.

Mr. McKEAN. Have you ever been to the Grand Hotel with Governor Sununu?

Mr. ROGERS. Yes, yes, for him to speak on things.

Mr. McKEAN. Ever to socialize with Mr. Yazbek?

Mr. ROGERS. No.

Mr. McKEAN. Or Mr. Darwish?

Mr. ROGERS. No.

Mr. McKEAN. You don't know how many occasions you might have been there with Governor Sununu?

Mr. ROGERS. Just a wild guess, I mean, in the banquet rooms.

Mr. SCHILLER. Don't guess.

Mr. McKEAN. Now, when did Mr. Darwish call you to invite you to meet with Moussa Raphael?

Mr. ROGERS. It was in late August on a Saturday.

Mr. McKEAN. You don't remember the date exactly?

Mr. ROGERS. No.

Mr. McKEAN. You've checked your calendars?

Mr. ROGERS. I haven't, but I could. I was in Indianapolis that day, is the reason.

Mr. McKEAN. What did he tell you when he called you?

Mr. ROGERS. That his friend Moussa Raphael was in town, looking for lawyers, and asked me if I would please come by the hotel and meet him.

Mr. McKEAN. Did he identify at that time who your potential client might be?

Mr. ROGERS. No.

Mr. McKEAN. Did he mention Kamal Adham at that time?

Mr. ROGERS. Not that I recall, no.

Mr. McKEAN. Did you subsequently meet with Mr. Darwish and Mr. Moussa Raphael?

Mr. ROGERS. Yes. Mr. Raphael.

Mr. McKEAN. Mr. Raphael, excuse me. When did you meet with him?

Mr. ROGERS. That night, that Saturday night.

Mr. McKEAN. Where did you meet?

[Witness conferred with counsel.]

You met him Saturday night. Where did you meet?

Mr. ROGERS. At the Grand Hotel.

Mr. McKEAN. How long was the meeting?

Mr. ROGERS. 45 minutes.

Mr. McKEAN. Did Mr. Darwish—was he in attendance at the meeting?

Mr. ROGERS. Not so much in attendance, he was around. We were served drinks.

Mr. McKEAN. He wasn't sitting there while you were discussing—

Mr. ROGERS. I don't think so, no.

Mr. McKEAN. What did you discuss with Mr. Raphael?

Mr. ROGERS. Just a general overview of what was doing here on behalf of the sheikh, in order to organize the sheikh's legal affairs.

Mr. McKEAN. Did he indicate at that time whether or not Mr. Adham was involved with BCCI?

Mr. ROGERS. Well, he generally outlined the problems that were relevant to the sheikh or First American, BCCI, yes.

Mr. McKEAN. Did he identify Mr. Cacheris as Mr. Adham's criminal lawyer?

Mr. ROGERS. At some point, yes. I don't remember specifically, but yes, it must have come up.

Mr. McKEAN. Did he make you an offer at that time?

Mr. ROGERS. No. No, he didn't.

Mr. McKEAN. Do you know if you were seeing Mr. Raphael at the beginning of his trip or at the end of his trip?

Mr. ROGERS. I don't know.

Mr. McKEAN. Did he indicate how long he had been in the country or how much longer he was staying?

Mr. ROGERS. No. No.

Mr. McKEAN. Did you tell him at that time that you had been a former political director of the White House?

Mr. ROGERS. To the degree to which we talked about my background with any specifics, I don't really remember.

Mr. McKEAN. Did he tell you that Mr. Adham was a former Saudi intelligence chief?

Mr. ROGERS. I don't remember if he specifically said that or not, but I remember just generally going over the sheikh's affairs, the sheikh's background, but I don't remember with any precision when I learned that.

Mr. McKEAN. But you believe you learned it from Moussa Raphael?

Mr. ROGERS. I'm not sure. I'm not sure where and when learned that. I know that I knew that prior to my agreeing to represent him.

Mr. McKEAN. When did you receive an offer to represent Mr. Adham, and how was that offer conveyed?

Mr. ROGERS. When we were in Jeddah. Moussa asked Haley and I under what conditions we would represent the sheikh.

Mr. McKEAN. Why did you go to Jeddah?

Mr. ROGERS. To learn more about the sheikh's affairs, to meet the sheikh, to talk more with the sheikh's lawyers and advisors.

Mr. McKEAN. So at that meeting you accepted an invitation from Moussa, from Moussa Raphael, to go to Jeddah to meet with the sheikh.

Mr. ROGERS. No. I told him that I would talk to my partner about it and we would get back with him, so subsequent to that we talked back with him and said we'd go to Jeddah.

Mr. McKEAN. When did you talk to your partner about this?

Mr. ROGERS. Maybe the next Monday, perhaps over the weekend.

Mr. McKEAN. What did your partner say?

Mr. ROGERS. I just sort of generally outlined what I'd been told, we talked to a couple of people about him, and we would make a decision, but that was it.

Mr. McKEAN. So you decided that after you talked with a few people and learned a little bit more about Mr. Adham that if he checked out that you would go to Jeddah. Is that a fair summary?

Mr. ROGERS. That's fair.

Mr. McKEAN. When did you first call Sandy Charles?

Mr. ROGERS. Here again, I don't remember the date—shortly after.

Mr. McKEAN. So it would have been the beginning of that following week, then.

Mr. ROGERS. I think so, but I don't know. I don't know that. don't know exactly when I called her.

Mr. McKEAN. Well, you didn't reach her right away, did you?

Mr. ROGERS. I think I did.

Mr. McKEAN. You think you did. You think you reached her the first time you called her?

Mr. ROGERS. I don't remember not reaching her.

Mr. McKEAN. And you know Ms. Charles from your days at the White House?

Mr. ROGERS. Working at the White House.

Mr. McKEAN. What was her position there?

Mr. ROGERS. She worked at the National Security Council.

Mr. McKEAN. How did you happen to know somebody who worked at the National Security Council?

Mr. ROGERS. She actually worked for Richard Haas—the close proximity of working for other staff people.

Mr. McKEAN. Did you attend meetings together?

Mr. ROGERS. No one meeting that I can remember specifically. knew her and was familiar with her.

Mr. McKEAN. But you did attend meetings with her?

Mr. ROGERS. None that I can remember specifically.

Mr. McKEAN. You can't remember attending meetings with her?

Mr. ROGERS. Not a specific meeting, no.

Mr. McKEAN. Did you know Ms. Charles to be close to Governor Sununu?

Mr. ROGERS. Here again, she was a staff person, not necessarily close.

Mr. McKEAN. Did she attend meetings with Governor Sununu?

Mr. ROGERS. I would think so, but I can't speak to meetings that she may have attended that he was there.

Mr. McKEAN. What did you tell Sandy Charles when you called her?

Mr. ROGERS. That we had been approached about this. Did she know anything about this guy, Sheikh Kamal.

Mr. McKEAN. Did you identify him as a former chief of Saudi Intelligence to Sandy Charles?

Mr. ROGERS. I don't know. If I knew it then, I would have not that I remember.

Mr. McKEAN. What did she tell you?

Mr. ROGERS. Just that he was a well-known figure, prominent in that part of the world.

Mr. McKEAN. She didn't say that she would have to find out?

Mr. ROGERS. She may have called me back. We may have swapped phone calls back and forth about it. I don't remember anything with more precision.

Mr. McKEAN. Did she have a wealth of information about Mr. Adham when you called her?

Mr. ROGERS. I wouldn't characterize it as that.

Mr. SCHILLER. Wait a minute, which phone call, now, the first phone call or the second?

Mr. McKEAN. The first phone call?

Mr. ROGERS. Well, I don't remember if she had to call me back. I think we talked more than once.

Mr. McKEAN. And if she did call you—you believe she did call you back.

Mr. ROGERS. Sure.

Mr. McKEAN. Did she call you back before you left for Jeddah?

Mr. ROGERS. Yes.

Mr. McKEAN. What did she tell you?

Mr. ROGERS. That he was a well-known figure.

Mr. McKEAN. And how had she gained that information?

Mr. ROGERS. I don't—I could only guess.

Mr. McKEAN. Did she reveal that to you?

Mr. ROGERS. Not necessarily. I don't remember.

Mr. McKEAN. You also talked to Mr. Bamieh?

Mr. ROGERS. Yes.

Mr. McKEAN. How do you know Mr. Bamieh?

Mr. ROGERS. I've known him from back in the campaign. He was a friend of Lee Atwater's, who worked for.

Mr. McKEAN. A friend of Lee Atwater's, who you worked for?

Mr. ROGERS. I worked for Lee Atwater back during the campaign.

Mr. McKEAN. Do you know if Governor Sununu knows Mr. Bamieh?

Mr. ROGERS. Yes, he does.

Mr. McKEAN. How do you know that?

Mr. ROGERS. I've seen them together.

Mr. McKEAN. Where?

Mr. ROGERS. At the White House.

Mr. McKEAN. Did Mr. Bamieh come to the White House on a regular basis?

Mr. ROGERS. He's been there a number of times that I can remember. I don't know if you'd characterize it as a regular basis.

Mr. McKEAN. For business meetings or social occasions?

Mr. ROGERS. Mostly in conjunction with contributor events, things like that—social events.

Mr. McKEAN. Any occasions which you would describe as substance or policy discussions that you're aware of?

Mr. ROGERS. None that I would describe as substance or policy.

Mr. WINER. If I may, just for clarification, is it fair to say that when Mr. Bamieh was at the White House, it was at political events rather than policy events or any kind of business events?

Mr. ROGERS. Political or social, I would say that.

Mr. McKEAN. Have you ever met Mr. Bamieh at the Grand Hotel?

Mr. ROGERS. No—yes. Yes, we've had dinner there before.

Mr. McKEAN. Does he know Mr. Yazbek and Mr. Darwish?

Mr. ROGERS. Not that I know of.

Mr. McKEAN. What's Mr. Bamieh's business?

Mr. ROGERS. He's a businessman, trade matters.

Mr. McKEAN. Can you be any more specific?

Mr. ROGERS. I really can't. I don't know that much about his business.

Mr. McKEAN. Did he ever invite you to come work for him?

Mr. ROGERS. No, no serious offers.

Mr. McKEAN. But you discussed it with him, the possibility?

Mr. ROGERS. We have discussed doing some legal work for him.

Mr. McKEAN. But beyond doing legal work for him, you've never discussed actually working for Mr. Bamieh as one of his employees?

Mr. ROGERS. No.

Mr. McKEAN. Do you know if Mr. Bamieh has ever worked for any intelligence agency of the U.S. Government?

Mr. ROGERS. Not that I know of.

Mr. McKEAN. You say no, he's a businessman?

Mr. SCHILLER. Don't tell us any of your secrets now, Dave.

Mr. McKEAN. Engaged in international business?

Mr. ROGERS. Right.

Mr. McKEAN. Do you know where he conducts that business?

Mr. ROGERS. I know that he has business in Saudi Arabia.

Mr. McKEAN. What do you know about his past business dealings in the Middle East?

Mr. ROGERS. Virtually nothing, just that he has business there.

Mr. McKEAN. Were you aware that he was placed under house arrest by the Saudi Government in 1987?

Mr. ROGERS. No. No. I'm sorry, house arrest by who?

Mr. McKEAN. The Saudi Government.

Mr. ROGERS. No.

Mr. McKEAN. Were you aware that he financed a trip to the Middle East of President Carter's sister in the late 1970's?

Mr. ROGERS. I think he has told me about that trip. I didn't know he paid for it. I don't know if he paid for it.

Mr. McKEAN. Were you aware that he's testified before Congress on Middle East issues?

Mr. ROGERS. No.

Mr. McKEAN. How often did you talk to Mr. Bamieh when you were at the White House?

Mr. ROGERS. There was no pattern to it, but monthly.

Mr. McKEAN. But the first time you talked to Mr. Adham was not until late August?

Mr. ROGERS. That's right, after I left the White House.

Mr. McKEAN. Do you know if Mr. Bamieh has ever met Mr. Adham?

Mr. ROGERS. I take it that—I don't know that. I don't have any first-hand knowledge, no.

Mr. McKEAN. Did he say that to you when you called him and asked him about Mr. Adham? Did he say, "Oh, I've met him?"

Mr. ROGERS. No, he didn't say that he had met him, just that he was very familiar with him.

Mr. McKEAN. Did he give you any advice about representing Sheikh Adham when you called him?

Mr. ROGERS. Just that he was well-known, a widely regarded figure.

Mr. McKEAN. So he didn't tell you it would be a mistake to represent Mr. Adham?

Mr. ROGERS. No.

Mr. McKEAN. Did he offer to find out more about Mr. Adham for you?

Mr. ROGERS. Well, I mean, that was the purpose of my call, to see what he knew.

Mr. McKEAN. So one call satisfied your curiosity?

Mr. ROGERS. We may have talked more than once. We may have talked more than once about it.

Mr. McKEAN. Did he invite you to attend a party at his house in San Francisco?

Mr. ROGERS. At a hotel, yes.

Mr. McKEAN. At a hotel. What hotel?

Mr. ROGERS. I think it was the St. Francis Hotel.

Mr. McKEAN. Do you remember the date of that party?

Mr. ROGERS. No—late August.

Mr. McKEAN. This is all happening in late August.

Mr. ROGERS. Right.

Mr. McKEAN. So he invited you to attend a party, and then the next day, or 2 days later you went to the party?

Mr. ROGERS. I don't remember what the time span was between the invitation and going out.

Mr. McKEAN. Sandy Charles' records reflect that you called her on August 26. We've also got a call to Mr. Bamieh on August 26, and he tells us that he—that you attended that party on August 27. Do you remember that kind of proximity?

Mr. ROGERS. No. It seems like there was a little bit more lag time than that.

Mr. McKEAN. But you went to San Francisco to attend a party that Mr. Bamieh was giving?

Mr. ROGERS. Right.

Mr. McKEAN. And when you talked to him on the phone, did he—

Mr. SCHILLER. Excuse me, David.

[Witness conferred with counsel.]

Mr. McKEAN. Did Mr. Bamieh identify his guests when you talked to him—when you talked to him that first time to make an inquiry about Sheikh Adham and you say you believe he may have offered to give you more information, and he invited you to the party, did he indicate that—why did you understand that he was inviting you to this party?

Mr. ROGERS. To come out, go to a dinner that he was giving, and to have lunch with him the next day.

Mr. McKEAN. For what reason?

Mr. ROGERS. The dinner was a dinner that he was giving for Adnan Kashoggi and some local business—local business people and their wives, and the next day we had lunch to talk about whether or not—he wanted to know more about the law firm to see to what degree he might want to use our law firm.

Mr. McKEAN. So he told you that Mr. Kashoggi would be in attendance at this dinner?

Mr. ROGERS. Right.

Mr. McKEAN. Did he indicate if Mr. Kashoggi—

Mr. ROGERS. I don't know if he did that during that first phone call when I called him. I don't know that.

Mr. McKEAN. Did you know it before you went to the dinner?

Mr. ROGERS. Yes.

Mr. McKEAN. Did he at any time before that dinner indicate to you that Mr. Kashoggi would be in a position to tell you more about Mr. Adham?

Mr. ROGERS. No.

Mr. McKEAN. So you go to this dinner on August 27, and did you discuss Mr. Adham with Mr. Bamieh at that dinner?

Mr. ROGERS. Just that he acknowledged to Kashoggi that I was about to go out and meet with Sheikh Kamal.

Mr. McKEAN. What did Mr. Kashoggi—did you discuss Mr. Adham with Mr. Kashoggi?

Mr. ROGERS. Just to that degree. Just like that.

Mr. McKEAN. So there was not any discussion of what Mr. Adham's business interests were?

Mr. ROGERS. As best I remember, it was just a pleasantry. Ed Rogers was about to go out and see Sheikh Kamal and Kashoggi just said something like, "give him my regards," or something. It would have been something polite, or something.

Mr. McKEAN. There was no more extensive discussion than that?

Mr. ROGERS. Not that I recall.

Mr. McKEAN. Did you talk with Mr. Kashoggi during the dinner?

Mr. ROGERS. Not anything other than social chit-chat. There were several other people there.

Mr. McKEAN. Had you met Mr. Kashoggi before?

Mr. ROGERS. No.

Mr. McKEAN. Never?

Mr. ROGERS. Never.

Mr. McKEAN. Who else was in attendance?

Mr. ROGERS. I don't remember anyone's name—just local business people. I say local. I don't know that. I guess business people and their wives, spouses with them.

Mr. McKEAN. The next day you had lunch with Mr. Bamieh and you discussed your representation of his business interests?

Mr. ROGERS. Right.

Mr. McKEAN. Did you also discuss Mr. Adham during that luncheon?

Mr. ROGERS. Not in any real detail. I don't recall any specific discussion about Sheikh Kamal then.

Mr. McKEAN. And you returned to Washington that day.

Mr. ROGERS. I came straight back to Washington whenever I left. I spent the night and came back the next morning, after the lunch.

Mr. McKEAN. Do you remember when you left for Saudi Arabia?

Mr. ROGERS. I don't remember exactly, but it's in my records—my travel records.

Mr. McKEAN. August 31 sound right?

Mr. ROGERS. Sounds right.

Mr. McKEAN. Did you talk to anyone else about Mr. Adham before you left for Saudi Arabia?

Mr. ROGERS. Not that I remember.

Mr. McKEAN. The records show that on August 31 you left for a 3-day stay in Jeddah. Did anyone else from your office come with you?

Mr. ROGERS. Haley.

Mr. McKEAN. Who did you meet with in Jeddah?

Mr. ROGERS. Sheikh Kamal, Moussa Raphael, some of the Sheikh's legal and financial advisors.

Mr. McKEAN. Was Mr. Cacheris there?

Mr. ROGERS. No.

Mr. McKEAN. Could you describe each day as you remember it?

Mr. SCHILLER. Well, to interrupt, I'm going to give an instruction to my client. When you're meeting with a client, or a potential client, the information they share with you is subject to privilege, and I'm going to instruct you to protect those communications, because that is your ethical duty to a former client.

To the extent that David asks you about meetings and who attended, and where they were held and when they were held, and whether they concerned the communication of information related to your providing legal advice to your potential client or your new client, please answer him, but please, as best you can, do not reveal the substance of such communications, for to do so would breach your duty to your client. I've had past conversations with David and Jonathan about that, and I believe they're comfortable with that instruction.

Mr. ROGERS. It would be impossible for me to give a day-by-day chronology. It was a series of meetings with financial and legal advisors.

Mr. McKEAN. All-day meetings?

Mr. ROGERS. Hours long.

Mr. McKEAN. Did you socialize with Mr. Adham?

Mr. ROGERS. We went to his house one evening for dinner.

Mr. McKEAN. Did you convey the greetings of Mr. Kashoggi?

Mr. ROGERS. No.

Mr. McKEAN. You never mentioned Mr. Kashoggi to Mr. Adham?

Mr. ROGERS. I don't think so, not that I remember.

Mr. McKEAN. How about Mr. Bamieh? Did you mention Mr. Bamieh to Mr. Adham?

Mr. ROGERS. No.

Mr. McKEAN. You returned to the United States on September 3, and you've provided a letter to us in which you've written Mr. Moussa Raphael thanking him for the opportunity to join Mr. Adham's legal team, so an offer was made to you when you were in Jeddah?

Mr. ROGERS. That's correct.

Mr. McKEAN. Do you remember when that offer was made, at what point?

Mr. ROGERS. No, not with any precision.

Mr. McKEAN. Was it the beginning of your stay there, or was it toward the end of your stay?

Mr. ROGERS. It was toward the end. I don't remember with any clarity when it was.

Mr. McKEAN. A week later you received a check for \$136,000, and on that same day you called Mr. Bamieh. Do you remember what you discussed with Mr. Bamieh?

Mr. ROGERS. No.

Mr. McKEAN. Do you remember why you called him?

Mr. ROGERS. No, I don't.

Mr. McKEAN. Do you remember discussing the fact that you had decided to represent Sheikh Adham?

Mr. ROGERS. I don't know when I told Sam that.

Mr. McKEAN. Were you still discussing the possibility of representing Mr. Bamieh at that time?

Mr. ROGERS. Perhaps. Not anything specific.

Mr. McKEAN. Well, why would you be calling Mr. Bamieh?

Mr. ROGERS. He's a friend. I have counted on him for advice. It's not unusual for us to talk.

Mr. McKEAN. Then you called him the next day?

Mr. SCHILLER. I must tell you, David, that in our business one often finds reason to call potential clients.

Mr. McKEAN. I'm sure.

You talked to him the next day, the following day. Do you remember then, were you still talking to him about potential representation?

Mr. ROGERS. Perhaps. It could have been. Our talk about representing him has gone on back and forth, different matters.

Mr. WINER. Do you recall the matters that were of concern to you and Mr. Bamieh in that period that you discussed?

Mr. ROGERS. No. Not with any detail, no.

Mr. WINER. Do you have any recollection of the matters you discussed with Mr. Bamieh during this period?

Mr. ROGERS. I don't remember any details of our discussions.

Mr. WINER. Accepting that you don't remember any details, do you remember any of the substance of your communications with Mr. Bamieh in that period?

Mr. ROGERS. Only that I specifically remember calling him to ask about Sheikh Kamal.

Mr. WINER. Beyond asking him about Sheikh Kamal, do you have any memory of any substance, any substance pertaining to those communications?

Mr. ROGERS. No.

Mr. WINER. So you don't recall whether or not you talked about representing him in any matter at that time?

Mr. ROGERS. No specific matter that I can recall.

Mr. WINER. Do you recall whether you were soliciting his legal business at that time?

Mr. ROGERS. Not soliciting, no. We don't represent him. We don't.

Mr. WINER. Do you recall any other matter, other than your representation of Mr. Adham that might have been discussed?

Mr. ROGERS. No specific matter. We're friends. It's not unusual for us to chat.

Mr. WINER. On what kinds of matters did you chat?

Mr. ROGERS. Nothing that I can remember specifically. It would not be unusual for him to call. I can remember him calling about my wife taking the bar.

Mr. WINER. So personal matters unrelated to your business, unrelated to his business?

Mr. ROGERS. That's fair.

Mr. McKEAN. In mid-September, Mr. Raphael returned to this country. Did you meet with him at that time?

Mr. ROGERS. I assume I did. I met with him when he came here.

Mr. McKEAN. You did meet with him in mid-September?

Mr. ROGERS. I am assuming—I am assuming that I did. When he I. came here I met with him. I'm assuming he didn't make a trip that I don't know about. I don't have a specific recollection.

Mr. McKEAN. He was here in March. Did you meet with him then?

Mr. ROGERS. Mr. Raphael?

Mr. McKEAN. Yes.

Mr. ROGERS. Yes.

Mr. McKEAN. You met with him in March of 1991.

Mr. ROGERS. Oh, no, I'm sorry. I thought you meant—this is March now.

Mr. McKEAN. Right.

Mr. ROGERS. No, I thought you meant—I have met with him since this whole thing blew up.

[Witness conferred with counsel.]

Mr. McKEAN. Why are you still meeting with him?

Mr. ROGERS. Well, I met with him to finalize some other business and hand over—where things were specifically on the trust agreement.

Mr. McKEAN. How many times have you met with him since October 28?

Mr. SCHILLER. Since when?

Mr. McKEAN. October 28, 1991.

Mr. ROGERS. Perhaps twice.

Mr. McKEAN. In March and when else?

Mr. ROGERS. No, I'm sorry, I didn't meet with him in March. This is March.

Mr. McKEAN. Right.

Mr. ROGERS. I didn't meet with him in March.

Mr. McKEAN. Excuse me, that's my fault. You met with him in March 1992. What was the other occasion between October 28, 1991 and March?

Mr. ROGERS. I met with him—I met with him to finalize and hand over matters that we were working on, specifically on the trust, then I met with him one time subsequently to that just—I dropped by the Grand Hotel to say hello. He asked me to. He was worried about me.

Mr. McKEAN. In mid-September, do you remember how many times you may have met with him during his 4-night stay?

Mr. ROGERS. No.

Mr. McKEAN. You have no recollection?

Mr. ROGERS. No. I don't recall how many times I would have met with him.

Mr. McKEAN. Do you remember if anyone else attended at the meeting?

Mr. ROGERS. Plato, Haley.

Mr. McKEAN. Do you remember what was discussed?

Mr. ROGERS. General matters relating to the sheikh's problems and defense.

Mr. SCHILLER. David, just a second.

[Witness conferred with counsel.]

[Discussion off the record.]

Mr. McKEAN. On September 23, you registered as a foreign agent and in your registration you indicated that your representation of Mr. Adham, "could border on political." What did you mean by that?

Mr. ROGERS. That was a quote from the statute and "border on political," as it was relayed to me by counsel, meant anything outside the course of a normal—of a legal proceeding.

Mr. McKEAN. What did you anticipate your representation might be outside the course of a legal proceeding?

Mr. ROGERS. Whether or not handling matters associated with the trust was a normal legal proceeding.

Mr. McKEAN. Was your understanding of that phrase in the statute limited to that one area? In other words, did you only think that the trust issue—that the issue of the trust would be the only possible thing that could border on political?

Mr. ROGERS. Yes. That was the only one that I anticipated at the time that we did the filing.

Mr. McKEAN. On September 30, you left for Cairo for 3 days. Do you remember where you stayed?

Mr. ROGERS. I'm just drawing a blank on the hotel. It was like a Hilton. It was like a big name hotel.

Mr. McKEAN. Who accompanied you on that trip?

Mr. ROGERS. I went with Plato and Preston Burton.

Mr. McKEAN. Who did you meet with in Cairo?

Mr. ROGERS. The sheikh's—the sheikh's accountant and business and legal employees, and met with the sheikh.

Mr. McKEAN. You met with the sheikh?

Mr. ROGERS. Yes.

Mr. McKEAN. Moussa Raphael?

Mr. McKEAN. When you returned from—off the record.

[Discussion off the record.]

Mr. McKEAN. After you returned from Cairo on October 6, you called Mr. Bamieh from your home three times. Do you remember why you called him?

Mr. ROGERS. No. No, I don't.

Mr. McKEAN. Do you remember anything about your discussions with Mr. Bamieh?

Mr. ROGERS. No.

Mr. McKEAN. Did you report on—did you report on your trip to Cairo to Mr. Bamieh?

Mr. ROGERS. Perhaps I would have acknowledged to him that I was there. I don't remember with any specificity.

Mr. McKEAN. Well, during this entire period, were you discussing your representation of Sheikh Adham with Mr. Bamieh?

Mr. ROGERS. Never. I wouldn't have discussed any matters relating the sheikh's problems with the Feds, but generally talking about what I'm up to would be the kind of thing I would talk to Sam about.

Mr. McKEAN. The next day, on October 7, you met with Frank Carlucci.

Mr. ROGERS. I don't know the exact date, but it could have been.

Mr. McKEAN. Who attended that meeting?

Mr. ROGERS. Sandy Charles and myself.

Mr. McKEAN. Anyone else?

Mr. ROGERS. Perhaps David Rubinstein was there part of the time.

Mr. McKEAN. Who set up that meeting?

Mr. ROGERS. Sandy Charles.

Mr. McKEAN. At your request?

Mr. ROGERS. Yes, that's fair to say, at my request.

Mr. PILCHER. Could I ask what the name of Carlawi's firm is?

Mr. ROGERS. You know, I don't know.

Mr. PILCHER. Is it Carlawi, or is it a different name?

Mr. ROGERS. It's not that. I don't know what it is. We've got it somewhere.

Mr. McKEAN. Well, why did you want to have a meeting with Frank Carlawi?

Mr. ROGERS. Part of what we were to do was to help assemble the teams, the sheikh's team of financial accounting and legal advisors, and I wanted to talk with him about that.

Mr. McKEAN. Talk about assembling a team of financial accounting and legal advisors?

Mr. ROGERS. Well, in his case whether or not his firm could be financial advisors.

Mr. McKEAN. What is Mr. Carlawi's firm involved—what kind of business do they do?

Mr. ROGERS. Well, I don't want to speak for the firm, but they don't do financial. Mr. McKEAN. As you understood it.

Mr. ROGERS. They don't do financial planning. They're not financial managers. They buy and sell, and it's on a deal-by-deal basis, but they do not handle people's money.

Mr. PILCHER. Yes, I think it is Carlisle Group. I think they're in the middle of this buy-out of LTV.

Mr. McKEAN. Did you know Mr. Carlawi prior to meeting him?

Mr. ROGERS. I knew who he was. I had met him but didn't really know him.

Mr. McKEAN. What came of that meeting?

Mr. ROGERS. Nothing, in that he just said we don't manage finances. We don't manage people's money. We just do things on a deal-by-deal basis.

Mr. McKEAN. Did he know Mr. Adham?

Mr. ROGERS. I think he knew who he was.

Mr. McKEAN. Did he indicate to you whether or not he had ever met him?

Mr. ROGERS. Not that I remember.

Mr. McKEAN. Why did you select Mr. Carlawi?

Mr. ROGERS. I knew that Sandy was working for him and that it was a well-known financial business, and so I did it through Sandy.

Mr. McKEAN. In mid-October you returned to Cairo for 6 days. Did you stay at the same hotel?

Mr. ROGERS. Yes.

Mr. McKEAN. Whatever it is.

Mr. ROGERS. It should have been in my records.

Mr. McKEAN. You again met with the sheikh's legal and financial team?

Mr. ROGERS. Essentially the same people, as I recall.

Mr. McKEAN. The sheikh himself?

Mr. ROGERS. Yes.

Mr. McKEAN. Did you come into contact with any member of the U.S. Justice Department?

Mr. ROGERS. No. Oh, yes—yes. I met David Eisenberg as he came into the room to meet with the sheikh. I walked out and we shook hands.

Mr. McKEAN. Is that the only contact you had with Mr. Eisenberg or any other U.S. Government official?

Mr. ROGERS. A virtual identical encounter the next morning. Besides him, no one.

Mr. McKEAN. The day you returned from Cairo, I believe that there was a story in the newspaper about your representation of Mr. Adham.

Mr. ROGERS. Right.

Mr. McKEAN. Is that correct?

Mr. ROGERS. Yes. Actually, the story broke while we were there.

Mr. McKEAN. Then you called Cairo that day. Did you talk with Moussa Raphael or with Sheikh Adham?

Mr. ROGERS. I don't remember. I have never talked to Sheikh Kamal on the phone, so I know it wasn't him.

Mr. McKEAN. Then did you talk to Mr. Raphael?

Mr. ROGERS. I don't remember.

Mr. McKEAN. Do you remember why you called Egypt?

Mr. ROGERS. I don't remember, I don't remember making the call.

Mr. McKEAN. Did you talk to anybody at the White House that day?

Mr. ROGERS. Not that I recall.

Mr. SCHILLER. What day are we on?

Mr. McKEAN. This is the day the story about Mr. Roger's representation of Kamal Adham was in the press, the first day.

Mr. PILCHER. That would have been October 26.

Mr. WINER. October 23.

Mr. McKEAN. October 23.

Mr. SCHILLER. OK, thank you.

Mr. McKEAN. Do you remember if Mr. Raphael came to the United States shortly after that?

Mr. ROGERS. It was shortly after that when we had one of our meetings for me to hand off some of the trust materials, so sometime after that.

Mr. McKEAN. By the way, did you have any other meetings? Did you setup any other meetings similar to the one with Frank Carlawi in which you were trying to establish whether or not there were other financial, accounting, or legal entities that might be of use to Sheikh Adham?

Mr. ROGERS. No, there were no other meetings.

Mr. McKEAN. Not just with Frank Carlawi, but with any other financial accounting or legal group?

Mr. ROGERS. None that I remember, no.

Mr. McKEAN. Let us get to the letter that you wrote to Boyden Gray explaining your representation of Mr. Adham. You wrote: prior to agreeing to represent Mr. Adham I made inquiries about him among former Government officials, people in the private sector who had dealings—who had dealings—actually I do not have the exact language. At any rate it is your statement in which you suggest that there is more than one Government official?

Mr. ROGERS. Yes.

Mr. McKEAN. And more than one person in the private sector?

Mr. ROGERS. Yes.

Mr. McKEAN. Let me just read it for the record. "Prior to agreeing to represent Mr. Adham I made inquiries about him among former Government officials and people in the private sector who have had dealings in Saudi Arabia." Can you explain that?

Mr. ROGERS. The only recollection I have is of the one individual—the former Government official and the one individual from the private sector. Perhaps as I prepared that I used those two people as plural, but I don't have any recollection of talking to other people.

Mr. McKEAN. Do you think you might have been talking about Adnan Kashoggi as an individual in the private sector?

Mr. ROGERS. No, no.

Mr. McKEAN. Why are you certain about that?

Mr. SCHILLER. Why is he so certain about what he had in mind when he wrote that? OK.

Mr. McKEAN. Why are you certain that you are not referring to Adnan Kashoggi?

Mr. ROGERS. Because we had no substantive or serious conversation about Sheikh Kamal prior to my deciding to represent him, or since then.

Mr. McKEAN. Well you were at a party with an individual who has well known interests in the Middle East, is considered one of the richest men in the world if you believe some of the press accounts. Why did you not broach the issue of Mr. Adham with Mr. Kashoggi?

Mr. ROGERS. I don't know him. I don't know to what degree I would want his advice, I have no reason to.

Mr. McKEAN. Did Mr. Bamieh tell you that Mr. Kashoggi believed that representing Mr. Adham was a good idea?

Mr. ROGERS. Not at that time, no.

Mr. McKEAN. At anytime?

Mr. ROGERS. After your call he called me and told me, and that's when I learned that he had talked to Kashoggi about it after your call to him.

Mr. McKEAN. He never conveyed it to you?

Mr. ROGERS. No, no.

Mr. McKEAN. Did he tell you that he had told me that he conveyed it to you?

Mr. ROGERS. Say that again.

Mr. WINER. Did Mr. Bamieh inform you that he had advised the Senate it was his understanding that you and Kashoggi had discussed your prospective representative of Adham?

Mr. ROGERS. No. He told me just generally about the phone call and that's when I learned that one of the people he had talked to, or someone he had talked to about whether or not I should do it, was Adnan Kashoggi. I didn't know it prior to that.

Mr. WINER. So I take it if Mr. Bamieh told us that Mr. Kashoggi and you discussed your prospective representation of Adham, Mr. Bamieh was wrong.

Mr. SCHILLER. Objection. You want to show me a transcript of what the guy said here? I mean he is not going to call anybody right or wrong. You are using very general words, Jonathan. He has told you that he did not have that substantive conversation.

Mr. WINER. Fine, fine.

Mr. ROGERS. That's right, there was no substantive conversation with Kashoggi.

Mr. WINER. You and Adnan Kashoggi did not discuss your representation of Mr. Adham. Is that correct?

Mr. ROGERS. Sam Bamieh, in my presence, said he is about to go to see Sheikh Kamal. It was a polite, informal chat, and he just said something like "send him my regards" or something like that. There was no discussion of the merits of whether or not, or what the nature of the representation may or may not be.

Mr. McKEAN. And he never indicated to you when he invited you to the party that he wanted you to meet Mr. Kashoggi because Mr. Kashoggi knew Mr. Adham?

Mr. ROGERS. Not that I recall. I mean he told me that Kashoggi was going to be there.

Mr. WINER. At the time that you went to the party for Kashoggi.

Mr. SCHILLER. Was it a party for Kashoggi?

Mr. McKEAN. That is how you have identified it, I think.

Mr. SCHILLER. Let us listen to the end of the question, I am just objecting to his characterization in the record. If they both believe that you said that then let him ask the question. Sorry to interrupt you.

Mr. WINER. At the time you went to the party at which Mr. Kashoggi was a guest, had you ever been advised or learned that Kashoggi had a relationship with BCCI?

Mr. ROGERS. No.

Mr. WINER. Were you aware that Kashoggi had been involved in arranging U.S.-Iranian arms deals?

Mr. ROGERS. No.

Mr. WINER. Were you aware that Kashoggi had represented the CIA or other aspects of the U.S. Government in connection with foreign arms sales?

Mr. ROGERS. No. I was just vaguely aware of who Kashoggi was.

Mr. WINER. At the time that you met Kashoggi—

Mr. McKEAN. You had no knowledge that Mr. Bamieh had given testimony before Congress where he mentioned Mr. Kashoggi?

Mr. ROGERS. No, no.

Mr. McKEAN. The first time you have learned that is today?

Mr. ROGERS. Today, yes.

Mr. McKEAN. Do you know Brent Scowcroft?

Mr. ROGERS. Yes.

Mr. McKEAN. Have you ever discussed Mr. Adham with him?

Mr. ROGERS. No.

Mr. McKEAN. In your public statement which you made on October 29, 1991, you said: "invariably those who knew or knew of him, referring to Mr. Adham, said that he was very well regarded and that he had the respect of Americans who had dealt with him in the past." Who said that he had the respect of Americans?

Mr. ROGERS. That was just my own characterization. People that I had come in contact with.

Mr. McKEAN. Well, based on what?

Mr. ROGERS. Based on conversations with people like Sam Bamieh.

Mr. McKEAN. Who else?

Mr. ROGERS. I can't think of any specific people that I had in mind when I wrote that; that was just my own general characterization.

Mr. McKEAN. Were you aware that Mr. Bamieh met with Mr. Adham in December of 1991?

Mr. ROGERS. I don't have any firsthand knowledge of them meeting.

Mr. McKEAN. Were you aware of that?

Mr. ROGERS. No.

Mr. McKEAN. Did Mr. Bamieh tell you that when he telephoned you recently?

Mr. ROGERS. Not that I recall.

Mr. McKEAN. Are you aware that Mr. Bamieh met with Governor Sununu in February of this year?

Mr. ROGERS. Not that I know of.

Mr. McKEAN. Did he tell you that when he called?

Mr. ROGERS. Not that I remember.

Mr. McKEAN. Has Governor Sununu ever conveyed that to you?

Mr. ROGERS. No.

Mr. McKEAN. Have you discussed Kamal Adham or your representation of him on any BCCI-related matter with Governor Sununu since his departure from the White House?

Mr. ROGERS. No.

Mr. McKEAN. Anything more?

Mr. WINER. Yes, just a couple issues.

John Schmitz and Gregg Walden, did you ever meet them when you were working at the White House?

Mr. ROGERS. Yes.

Mr. WINER. Could you please describe the nature and extent of your contacts with them?

Mr. SCHILLER. Would you please tell me their names?

Mr. WINER. John Schmitz and Gregg Walden were the two White House attorneys he identified earlier as his contacts in Boyden Gray's office.

Mr. SCHILLER. Thank you.

Mr. ROGERS. John Schmitz is the deputy director of Boyden Gray's office. A contact with him would have been just in the routine course of business. Gregg Walden does all the financial disclosure stuff in the White House, so I worked with him on my financial disclosures, my exit papers from the White House, that kind of stuff.

Mr. WINER. Had you ever had any contact with Mr. Schmitz and Mr. Walden on any social matter?

Mr. ROGERS. None that I recall specifically. We were friendly.

Mr. WINER. Had you ever had any contact with them on any political matter, that is nonlegal or nonsubstantive matter?

Mr. ROGERS. None that I recall.

Mr. WINER. The San Francisco trip that you went on to Mr. Bamieh, the purpose of the trip was described as to meet with him following the dinner.

Mr. ROGERS. That's right.

Mr. WINER. And to discuss business plans.

Mr. ROGERS. That's right.

Mr. WINER. Can you describe more completely the substantive discussions that took place?

Mr. ROGERS. Just generally.

Mr. SCHILLER. Well, I am going to instruct you not to reveal substantive matters connected with potential representation of Mr. Bamieh. For example, if he gave you a problem that he had, or issue that he had in his business life and asked how you would address that, what resources you to bring to bear to that.

Mr. ROGERS. I understand that.

Mr. SCHILLER. I believe that it is a privileged communication. I do not believe Jonathan is asking for that sort of information.

Mr. WINER. I am looking for the substance of what was discussed, I am not looking for a revelation of any privileged attorney-client material.

Mr. ROGERS. It was just general matters regarding his business, his use of attorneys.

Mr. WINER. Did you discuss any matter pertaining to the Middle East?

Mr. ROGERS. Not that I recall.

Mr. WINER. Did you discuss any matter pertaining to Mr. Adham?

Mr. ROGERS. Not that I recall.

Mr. WINER. Did you discuss any matter pertaining to BCCI?

Mr. ROGERS. Not that I remember.

Mr. WINER. Any matter pertaining to Moussa Raphael?

Mr. ROGERS. Not that I remember.

Mr. WINER. And in the communication with Kashoggi, I take it that you essentially exchanged no more than a sentence or two of conversation with Mr. Kashoggi?

Mr. ROGERS. I don't want to try to put a number on the sentences, but it was just a polite few moments, a couple of minutes at the most.

Mr. WINER. So the communication would not have lasted 10 minutes?

Mr. ROGERS. No.

Mr. McKEAN. And that was during the entire evening?

Mr. ROGERS. That's right.

Mr. WINER. More in the nature of a minute or two. Essentially, Mr. Bamieh said that Mr. Rogers is going to go to check out representation of Mr. Adham and Kashoggi said give him my best. Essentially, that was the subject of the communication.

Mr. SCHILLER. Well, Mr. Rogers also testified to having had social chitchat with the guests that evening. I do not know whether that excludes Mr. Kashoggi or not, but I would like to remind the witness of the record in that respect.

Mr. ROGERS. When we had—when Sam acknowledged to them that I was about to go over there, we did not dwell on that topic. We did not have a conversation about it. It was just, pleasantries were exchanged.

Mr. WINER. Did the trip in any way affect your judgment as to the tentative decision to represent Mr. Adham?

Mr. ROGERS. Well, we had not so much decided to represent him as we had decided to go and meet him and meet with his people.

Mr. WINER. And that decision was made before you went on this trip?

Mr. ROGERS. That's right.

Mr. WINER. And was not affected by the meeting in San Francisco?

Mr. ROGERS. That's correct.

Mr. WINER. And was not affected by anything Mr. Kashoggi said or anything Mr. Bamieh said, in the course of that trip?

Mr. ROGERS. No. Anything Kashoggi might have said was irrelevant; we were already going. It was irrelevant as to whether or not I was going to Jeddah.

Mr. WINER. You have no memory of Mr. Kashoggi encouraging your representation?

Mr. ROGERS. Nothing he did specifically to encourage the representation, no.

Mr. McKEAN. One final thing. You said that you had general discussions about possible representation of Mr. Bamieh. And, once again, can you just try to clarify what you believe your understanding was of Mr. Bamieh's business?

Mr. ROGERS. Just that he was in the trading business and we talked about his general use and need of law firms.

Mr. McKEAN. What did he trade?

Mr. ROGERS. I can't remember any products, any specific products that I can think of. I can guess.

Mr. McKEAN. You are talking about possible representation of somebody and you do not have any idea what business he is in except that he trades?

Mr. ROGERS. Well, the details of his business I do not want to say. I will say that I know that he wants to—

Mr. McKEAN. Well, what did he trade in? That should not be privileged information?

Mr. ROGERS. I know that he—if he has not, I know that he wants to trade in food products.

Mr. McKEAN. What does he trade in?

Mr. ROGERS. I don't know, I don't know. I can't identify any specific products for a fact.

Mr. McKEAN. You were having conversations about possibly representing him and you did not know what he traded in?

Mr. SCHILLER. I am going to object to the argumentative tone of that, David. But I would permit the witness to say, again, whether or not he can answer the question.

Mr. ROGERS. I can't answer the question in any detail about his business as he told me during those discussions. I don't know any specific project or product that would satisfy that question.

Mr. SCHILLER. I have got to tell you that I spent 3 hours with somebody who would not tell what his problem was, but that he was looking for a lawyer and it was a beauty contest and I was one of six lawyers whom over 3 days, he talked to. And it went on and on and on. All I kept doing was trying to explain our capabilities here and there. I have no idea to this day exactly what his problem is and he has hired me and someday I am going to learn, but it has not happened yet. This happens.

Mr. McKEAN. What was the name of Mr. Bamieh's company?

Mr. ROGERS. American Intertrade Group, AIG.

Mr. McKEAN. Did he identify the countries where he traded?

Mr. ROGERS. Outside of Saudi Arabia, none that I can recall.

Mr. PILCHER. I am not a lawyer so these are probably very nonspecific and maybe imprecise questions. You can object if you like. And I am not as argumentative as David tends to be. There are still some questions that I have and they are a bit more general.

I wondered, what do you consider your legal specialty, your area of expertise?

Mr. ROGERS. Well, we want to build a law firm. We want to build a law firm that represents corporate and individual clients. Principally, we want to do corporate work, trade work. We want to have a broad, general practice. Perhaps not litigation, but we want to have a broad, general practice.

Mr. PILCHER. When you go and talk to somebody, and I am sure you are doing that now, how do you sell yourself? What is it that you say about your firm that is interesting?

Mr. ROGERS. That we are two lawyers. I am of counsel to a 120-person firm that provides a broad array of expertise.

Mr. PILCHER. What do you consider your personal specialty? When you say broad array of expertise, what expertise in particular do you have?

Mr. ROGERS. Managing other people's affairs, managing people's problems, managing other people's business.

Mr. PILCHER. My mother-in-law is like that, but what do you mean exactly by it?

Mr. ROGERS. When people present me with a problem, I like to think that they can turn their back on it. They can tell me what the problem is and they'll know that I'll know how to go about my business to organize their affairs and do things on their behalf.

Mr. PILCHER. When this particular case was brought to you, what specific problem did you see that you thought you might be able to solve?

Mr. ROGERS. An organizational problem. A large business concern that needed a lot of different kinds of representation.

Mr. PILCHER. Meaning BCCI?

Mr. ROGERS. Meaning Sheikh Kamal, not BCCI.

Mr. PILCHER. Were you surprised when you were approached directly by the sheikh?

Mr. ROGERS. I wasn't surprised necessarily. I was building a law firm, looking for business.

Mr. PILCHER. Were you surprised though, I mean, building a law firm, were you surprised as the newspapers were that he had offered such a substantial sum?

Mr. ROGERS. I wouldn't characterize it as surprised. I have a lot of confidence in my ability. Like I said, I wanted to build a law firm.

Mr. PILCHER. Right, I understand that, but everybody wants to build. I mean, people who are starting out as lawyers obviously want to build a law firm, but not everybody that's building a law firm starts out with offers that are quite that lucrative. Did you get other—maybe I can't ask this question, but have you received other contracts that are equally as lucrative, is that a generally average type of contract that you would get?

Mr. ROGERS. I don't want to discuss fees.

Mr. PILCHER. Can you tell me whether or not it's routine for your firm in the last 8 months or so, since you've been in operation, is that a routine fee, or is that an exceptional one?

Mr. SCHILLER. His fees are not a matter of public record, and I think what your question is, although it's well-intentioned, it's just unfair. This matter, because it involved a decision on the part of the law firm to register—resulted in a disclosure of fees.

Mr. PILCHER. Right.

Mr. SCHILLER. And now, you're asking about really what is highly proprietary, his fee structure.

Mr. PILCHER. Well, part of the excitement about the whole case has been this particular fee as one that is abnormal.

Mr. SCHILLER. Well, it might have been exciting last August and the press had a lot of fun with it has with it. He has explained it in papers filed with U.S. Government, but as to comparing it to other fees, I'm not going to permit him do that.

Mr. MCKEAN. Was this your first contract at Barbour & Rogers?

Mr. ROGERS. No.

Mr. MCKEAN. Was it your second?

Mr. ROGERS. No.

Mr. MCKEAN. Do you remember how many contracts you received prior to getting this account?

Mr. ROGERS. No, I don't remember.

Mr. MCKEAN. You were there a month?

Mr. ROGERS. It wasn't the first or second.

Mr. MCKEAN. You've been there a month?

Mr. ROGERS. Yes.

Mr. MCKEAN. How many contracts did you have?

Mr. ROGERS. I don't know. It wasn't the first or second. It's going down the line. I don't want to guess. It was less than a dozen.

Mr. PILCHER. Could I just ask the lawyer?

Mr. SCHILLER. I'm sorry.

Mr. PILCHER. In your experience, is this a normal fee or a reasonable fee?

Mr. SCHILLER. No, absolutely not abnormal. I think it is a reasonable fee given the magnitude of the work that's envisioned, and the responsibility of the work that was envisioned. When you're called upon to represent someone and commit yourself to that work, then the retainer will reflect the level of the commitment, and if someone is going to retain you for a substantial fee, they're going to expect a commitment from you to assist in working through the process, which is what Ed was describing that you must then undertake.

Mr. PILCHER. Can you think of any other first time law firm that has ever gotten fees like that, or maybe that's just usual?

Mr. SCHILLER. It is not unusual, and yes, a number of law firms in Washington benefit from such retainers. Many have been met with substantial retainers. There are law firms in Washington that I know that are retained for millions of dollars a year just to be available to individuals and companies, to counsel them on a regular basis.

Mr. PILCHER. The question was really, the first time out?

Mr. SCHILLER. Well, when we opened our practice in 1976, I think within a month we were delighted and surprised by the kinds of work that came to us. Some of it was substantial. Some of the retainers were substantial, and some of the contingencies were substantial. We welcomed all of that. I don't see Ed and Haley's experience as much different. They're both outstanding professionals, outstanding lawyers. People come to them for assistance, that fee reflects it.

Mr. PILCHER. What kind of background research did you do? You told us you talked to these couple of guys and did, I guess, a cursory kind of—you talked to Sandy, Sandy Charles?

Mr. ROGERS. That was essentially it, then we went to Jedda.

Mr. PILCHER. What did you learn in Jedda? On the way to Jedda, had you already made up your mind that you were going to represent him?

Mr. ROGERS. No.

Mr. PILCHER. Could I just try to quantify that. A 60-40 chance that you were going to represent him?

Mr. ROGERS. There's no way I could quantify it. We weren't going to make a decision until we learned more about the sheikh and his affairs.

Mr. PILCHER. What happened during your trip to cause you to decide to represent him?

Mr. ROGERS. The way it was outlined to us, what it was that they needed.

Mr. PILCHER. How did they outline it?

Mr. ROGERS. Through a series of meetings with the sheikh's legal advisors, financial advisors.

Mr. PILCHER. I guess earlier you said you were a problem solver. What did they outline as the problem?

Mr. ROGERS. In the past, the sheikh had only been represented by Clifford & Altman here, Clifford & Warnke, I guess, and that they were going to put together another team.

Mr. PILCHER. So did they tell you specifically that they were linked in any way to BCCI, did they make it clear that that was part of the lawsuit against them?

Mr. ROGERS. Sure, that was part of the sheikh's affairs. Our association with the sheikh was going to be long-term in a number of business interests beyond BCCI.

Mr. PILCHER. But not just BCCI?

Mr. SCHILLER. Not just BCCI at all, you're a little late in the play, because you didn't have the benefit of the interview your colleagues had before and the record is very clear that he was not retained to work on BCCI. He's been very consistent about that.

Mr. PILCHER. And not to work on any of the legal problem, just the legal problems—even if the legal problems touched on BCCI?

Mr. SCHILLER. The basic issue of the trust which you've heard mentioned is certainly an outgrowth of the problems of First American, and to that extent, work on related matters, yes. He's testified to that.

Mr. PILCHER. So, in a sense, although you were going to work on a limited set of BCCI issues—

Mr. SCHILLER. I wouldn't characterize it as a set of BCCI issues. He was working on financial issues, that is how he has described them without detailing them.

Mr. PILCHER. So you had specifically discussed that you would not represent them on BCCI, is that correct?

Mr. ROGERS. No. We put in our letter of agreement that we wouldn't do anything that was lobbying, political. I don't remember, but you've got a letter, but anything that had anything to do with—

Mr. PILCHER. Right, I got your statement.

Mr. ROGERS. Public relations, lobbying, or political work.

Mr. PILCHER. But I'm saying legal work related to BCCI?

Mr. ROGERS. And also it says in there we're not going to work as criminal lawyers, and we're not going to be criminal lawyers.

Mr. PILCHER. You're just going to manage all of his affairs?

Mr. ROGERS. Not all of his affairs, no.

Mr. PILCHER. To what extent are you going to manage his affairs?

Mr. ROGERS. We were going to assist in finding those that were going to manage his affairs over a long period of time.

Mr. PILCHER. And you specifically exempted the part of his affairs that had to do with BCCI, except for this trust?

Mr. ROGERS. Not specifically exempted. Of course, we're not criminal lawyers, he had a criminal lawyer. He had a criminal lawyer in Plato Cacheris, and Mr. Cacheris was going to handle the BCCI-related investigations, criminal investigation.

Mr. PILCHER. Were you aware of BCCI as an investigation that was going on before you went to Saudi Arabia?

Mr. SCHILLER. Aware in what respect?

Mr. ROGERS. I was aware of some of the news coverage, that type of thing.

Mr. PILCHER. Were you aware of any of the things that were involved through the news coverage? Were you aware of any of the features that were involved?

Mr. ROGERS. No. Clifford & Altman, I guess I knew about that. I don't remember what I knew from just following the news coverage.

Mr. PILCHER. So would it be correct to say that when you talked to the sheikh, and you didn't know that he was involved in BCCI before you went to Saudi Arabia—

Mr. ROGERS. No, we knew about his problem with First American before we went.

Mr. SCHILLER. He's also explained, earlier today, that in a meeting that he had where he was invited to be considered for representation, the lawyer who engaged him in this discussion explained to him that lawyers were already retained to represent the sheikh before the Department Justice, and in what he called the investigation. That was him, that was for the criminal lawyers. That's what Mr. Rogers means by not to be involved in the BCCI problem.

Mr. PILCHER. Right, I understand that.

Mr. SCHILLER. Whatever they were.

Mr. PILCHER. Except as they related to the financial aspects of the sheikh's dealings, would that be correct?

Mr. ROGERS. Ask me that again?

Mr. SCHILLER. It's awfully fuzzy what that means.

Mr. PILCHER. Well, it's difficult to try to understand how, if you're managing all of someone's affairs, how there would be a segment of his affairs you were not?

Mr. ROGERS. We were not going to manage all of his affairs. We were going to find technical experts to assist in the technical areas of the sheikh's business.

Mr. SCHILLER. And it was a short-lived assignment, so it's not something that played out for many years. It was something that was to be a process; it was at the very beginning but it never unfolded. So it's hard for him to say what he was doing since it had a very short life.

Mr. PILCHER. But did you ever take any particular act to make certain that you would not get involved in any of the discussions about BCCI?

Mr. SCHILLER. What do you mean by that?

Mr. PILCHER. Did you write any letters, did you make a particular statement?

Mr. ROGERS. Only our agreement that was sent which indicated that matters regarding criminal investigations didn't come to me for any type of management participation.

Mr. PILCHER. Is it conceivable that the sheikh could have called you?

Mr. ROGERS. It's conceivable.

Mr. PILCHER. And asked you questions about that?

Mr. SCHILLER. I'm going to object to what's conceivable. He's stated that he's never talked by telephone with the sheikh.

Mr. PILCHER. You said were responsible for political affairs at the White House. Did you tell what your exact title was, I missed it probably.

Mr. ROGERS. Well, my exact title was Deputy Assistant to the President and Executive Assistant to the Chief of Staff. When Lee Atwater became ill, I also stepped in and began to manage the political office.

Mr. PILCHER. When you say you managed political affairs, which ones did you manage then? Did you manage all of them?

Mr. ROGERS. Well, it was actually a tactical role. During the 1990—

Mr. SCHILLER. Can we go off the record, please?

[Discussion off the record.]

Mr. ROGERS. You would manage the President's participation in political events, when he went someplace with a Congressman or a Senator someplace.

Mr. PILCHER. Did you pay any particular attention to any particular issues like on a Senator's staff, like Jonathan does?

Mr. ROGERS. No.

Mr. PILCHER. Would it be fair to say that Governor Sununu paid particular attention to Middle East problems?

Mr. ROGERS. No.

Mr. PILCHER. Did you have any relationship to his participation in Middle East interests?

Mr. ROGERS. No.

Mr. PILCHER. Any Middle East issues, did you sit in on any Middle East issues?

Mr. ROGERS. None specifically that I recall. I didn't participate.

Mr. PILCHER. When you were approached by the sheikh, did you feel that you already had some background in Middle East issues?

Mr. ROGERS. No, no expertise.

Mr. PILCHER. There's one other subject, Clifford & Altman, I know you discussed it in the interview. Did you ever meet with Mr. Clifford?

Mr. ROGERS. No.

Mr. PILCHER. Did you ever meet with Mr. Altman?

Mr. ROGERS. No.

Mr. PILCHER. Did either of them ever meet with Governor Sununu?

Mr. ROGERS. Not that I know of.

Mr. PILCHER. Did you ever speak to, while you were considering his offer, did you ever speak to Mr. Altman?

Mr. ROGERS. No.

Mr. PILCHER. Or Mr. Clifford?

Mr. ROGERS. No.

Mr. PILCHER. Did you ever speak to any lawyer from Clifford & Warnke to find out about their representation of the sheikh, about what they had been doing or anything like that?

Mr. ROGERS. No.

Mr. PILCHER. So the only two people you spoke to and got advice from were Sandy Charles and Sam Bamieh?

Mr. ROGERS. That's right, the only ones I remember.

Mr. PILCHER. And you conducted no other search?

Mr. ROGERS. Well, maybe we ran a check on some clips and things like that.

Mr. PILCHER. And then you went to Saudi Arabia and accepted?

Mr. ROGERS. That's correct.

Mr. PILCHER. While you were in Saudi Arabia?

Mr. ROGERS. That's correct.

Mr. PILCHER. And you felt that that was an adequate amount of background research?

Mr. ROGERS. Well, clearly at the time I accepted. I mean, I have since admitted to making a mistake.

Mr. PILCHER. Those are all my questions.

Mr. WINER. Do you know James Lake?

Mr. ROGERS. Yes.

Mr. WINER. Have you ever discussed with him any of his communications or contacts with Abu Dhabi?

Mr. ROGERS. No.

Mr. WINER. Have you ever discussed with him any aspects of his representation of anyone connected to the BCCI?

Mr. ROGERS. No.

Mr. PILCHER. Did you discuss with him your retainer in any part of this process with the sheikh?

Mr. ROGERS. No.

Mr. PILCHER. Have you discussed it with him since you left?

Mr. ROGERS. He's a good friend. We talk frequently. We've talked frequently about what's going on, and he has expressed concern about what I've been through.

Mr. WINER. I would note for the record that according to press accounts Mr. Lake was paid \$200,000 a quarter last year for his representation of Abu Dhabi, which would annualize at \$800,000 a year, which would be somewhat more than what Mr. Rogers was paid. I don't know the nature and extent of the work he was providing, but that's perhaps material, showing only that Bobby Bonilla was doing better.

Mr. McKEAN. Thank you very much.

[Whereupon, at 3:21 p.m., the taking of the instant deposition ceased.]

[The information that follows pertains to Mr. Rogers:]

EDWARD ROGERS
12 July 1992
Index Of Documents To Be Released

08/10/80 "Carter Sister Got Security Briefing On Mideast Tour" (New York Times).

06/22/87 "Saudis Said To Have Helped Pro-Western Rebels For U.S. Planes" (Reuters).

06/24/87 "Businessman Says Saudis Helped Fund Iranian Arms Purchases" (UPI).

07/01/87 "Businessman Says Saudis Sought His Help For Angolan Rebels" (AP).

07/02/87 "Congressman Says Laws Possibly Broken In Saudi Aid To Angolan Rebels" (AP).

07/09/87 "U.S. - Saudi Secret Deal Described" (Chicago Tribune).

09/04/87 "Documents Detail Khashoggi Iran Arms Transaction" (UPI).

11/14/87 "CIA Report: Syrians Plotted Moslem Leader's Death" (UPI).

04/20/89 "Homecoming For A Queen: White House Welcomes Jordan's King Hussein and Former Washington Noor" (Washington Post).

04/21/92 "U.S. Says Saudis Sent U.S.-Made Arms To Iraq and 2 Other Nations" (New York Times).

08/27/91 Two page document entitled "AK Dinner Party."

09/05/91 Retainer letter from Barbour & Rogers (signed by Ed Rogers) to Moussa Raphael re representation of Sheikh Kamal.

09/16/91 Receipt for purchase of House Banking Committee Hearing videotapes, provided by Mr. Edward Rogers.

09/20/91 Ed Rogers' DOJ Foreign Agent Registration Statement.

10/02/91 Letter form Balch & Bingham (signed by James F. Hughey) to John H. Vogel of Patton, Boggs, re review of the 09/13/91 CCAH Trust Agreement.

10/25/91 Statement of President George Bush re Ed Rogers.

10/28/91 Letter from Ed Rogers to C. Boyden Gray re Rogers' representation of Sheikh Kamal.

12/18/91 Memo by Jonathan Winer to the file re a conversation with Ed Rogers.

01/18/92 "BCCI A Victim Of Operation Overkill By West, Says Adham" (Middle East News Network).

04/16/92 Letter from Senator Kerry to C. Boyden Gray re Ed Rogers.

05/20/92 Letter from Senator Kerry to C. Boyden Gray re Ed Rogers. Attached: 11/01/91 Letter from C. Boyden Gray to Representative Schumer.

05/29/92 Response from C. Boyden Gray to Senator Kerry re Ed Rogers.

_____ "Sununu Whitewash" (New York Times).

_____ "B.C.C.I. and Sununu" (New York Times).

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June 22, 1987, Monday, AM cycle

HEADLINE: SAUDIS SAID TO HAVE HELPED PRO-WESTERN REBELS FOR U.S. PLANES

BODY:

Saudi Arabia made a secret deal with the Reagan administration in 1981 to fund pro-Western rebels in exchange for the right to buy U.S. AWACS radar planes, Time magazine reported today.

Time said Palestinian-born U.S. businessman Sam Bamieh told the magazine in an interview that Saudi King Fahd described the Saudi connection to him during a visit to Jeddah in late 1981, shortly after the U.S. Senate had approved the controversial sale of AWACS (Air Borne Warning and Control System) planes to Saudi Arabia. Bamieh was quoted as saying that Fahd told him the deal had run into trouble over the degree of U.S. participation in operating the AWACS' sensitive electronic gear. The deadlock was broken only when the Saudis acceded to U.S. requests to fund anti-Communist movements, Bamieh said.

"Where?" Bamieh was quoted as asking the Saudi leader.

"They'll tell us. We don't have to do it right away," Fahd replied, according to the report.

Time said Bamieh, who it said has long had close ties to the Saudi royal family, will detail his claims next week to the House Foreign Affairs Sub-committee on Africa, which is looking into covert U.S. aid to the guerrillas fighting Angola's Marxist government.

In the article, Time said Congressional investigators suspect the Reagan Administration used its Saudi connection to support the Angolan rebel group UNITA, "just as it later used the Saudis to help get around the Boland amendment which banned U.S. aid to the Nicaraguan contras."

The Clark amendment, passed in 1976 and in effect until August 1985, made it illegal for the U.S. to assist UNITA (National Union for the Total Independence of Angola), Time said.

The Saudis have denied aiding UNITA, but the magazine said their contributions to the contras are well established.

Bamieh, 48, recently filed a \$58 million damage suit in the United States against aides to King Fahd. Bamieh said the aides held him hostage for four months in Saudi Arabia last year, threatening to behead him unless he stopped claiming a member of the royal family owed him \$1.4 million.

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Carter Sister Got Security Briefing On Mideast Tour

Mrs. Stapleton's Trip Was Partly Paid for by Arab

By JUDITH MILLER

Special to The New York Times

WASHINGTON, Aug. 9 — Zbigniew Brzezinski arranged a National Security Council briefing for Ruth Carter Stapleton, President Carter's sister, shortly before she embarked last January on a Middle East tour that was financed in part by an Arab businessman, the White House confirmed today.

Mr. Brzezinski, President Carter's national security adviser, discussed the tour by telephone with Mrs. Stapleton on Jan. 2 and Jan. 9, according to a spokesman for the National Security Council, and arranged for Robert Hunter, the council's Middle East specialist, to give her a briefing. The White House also notified American embassies abroad of Mrs. Stapleton's tour, the council spokesman said.

While Mrs. Stapleton, a longtime evangelist, briefly discussed her trip "in a general way" with Mr. Carter after she returned from the Middle East, she "never discussed any political views on the Middle East with the President," Jody Powell, the White House press secretary, said in an interview today.

\$3,000 Paid by Businessman

Mr. Powell confirmed that Sam Bamieh, an Arab businessman based in Palo Alto, Calif., paid \$3,000 for Mrs. Stapleton's tour of several Middle Eastern nations. The total cost of the trip was put at \$11,000.

"During the course of the trip over there," Mr. Powell said, "she realized this person was attempting to exploit her and to use her." The press secretary added that after the trip Mr. Bamieh attempted to reach members of the National Security Council, including Mr. Brzezinski, but was rebuffed.

Mrs. Stapleton, accompanied by Mr. Bamieh and Cliff Custer, an evangelist from Rogue River, Ore., who is one of Mrs. Stapleton's associates, visited Egypt, Jordan, Oman and Saudi Arabia, as well as several European countries.

On Feb. 3 Mrs. Stapleton was quoted in Monday Morning, an English language regional newspaper in Lebanon, as saying that she wanted to meet Yasir Arafat, head of the Palestine Liberation Organization. She also responded affirmatively to a question about whether Jimmy Carter would be the "best President to serve



Ruth Carter Stapleton

the Arab cause and solve the Middle Eastern problem," and ended the interview by saying she believed that there would eventually be a Palestinian state.

'Putting Words in Her Mouth'

Mr. Powell said that Mrs. Stapleton had denied making any political statements during her trip, and added that "she felt that Cliff Custer and Mr. Bamieh were constantly prodding her to make political statements and putting words in her mouth."

In the Monday Morning article Mr. Custer was quoted as discussing what he believed were Mrs. Stapleton's views on the Middle East. At one point he said, "We believe that the Zionist press is losing its grip, and that this is the time when the American people want to hear a more even-handed message." But he added that "this is not Ruth speaking — remember that."

Mrs. Stapleton, who runs a retreat center near Denton, Tex., could not be reached for comment.

Mr. Bamieh is president of the Industrial Developments Group Inc. of Palo Alto, a company engaged in financial and marketing consulting and export management. The Peninsula Times of Palo Alto, which reported details of the Stapleton tour yesterday, described Mr. Bamieh as an exporter with business ties to Arab countries. Mr. Bamieh was said to be traveling and could not be reached for comment.

Intercepted Her Messages

Mr. Powell said that Mrs. Stapleton realized on the trip that Mr. Bamieh was attempting to "take advantage of and use a member of the President's family." Mrs. Stapleton told Mr. Powell that Mr. Bamieh had insisted on being present at all of her meetings and had told hotels at which she stayed to route all of her messages through him.

Mr. Powell added that the only contact Mrs. Stapleton had had with Mr. Bamieh since the trip was to "get names and addresses from him so she could write thank you notes."

The press secretary said he had not asked Mrs. Stapleton if she had returned any of the \$3,000 that Mr. Bamieh paid for the trip.

Mr. Powell also said that National Security Council briefings were "routinely" provided to members of the President's family before trips overseas. He stressed that Mr. Hunter's briefing contained "neither unclassified" information on the region. Mr. Hunter was unavailable for comment on the briefing.

Proprietary to the United Press International 1987

June 24, 1987, Wednesday, PM cycle

HEADLINE: Businessman says Saudis helped fund Iranian arms purchases

BYLINE: By GREGORY GORDON

BODY:

An American businessman with extensive ties to Saudi Arabia's royal family contends King Fahd was the chief financier of Iran's secret U.S. weapons purchases in 1985 and 1986.

Sam Bamieh, a naturalized American citizen, said in an interview with United Press International Tuesday that Fahd was hoping to gain favor with Iran's Ayatollah Ruhollah Khomeini to ward off possible threats to Saudi security.

Investigations of the Iran-Contra scandal have concluded Iran paid about \$30 million for the arms, at prices double or triple the Pentagon's cost, and about \$3.5 million of the profits were diverted to Nicaraguan Contra rebels.

Bamieh's assertion adds a new twist to the case. "The reason they paid those high prices was because the money wasn't theirs," he said of the Iranians.

Bamieh, of San Mateo, Calif., said he based his assertion that Fahd paid for the arms on statements made to him by confidants of Fahd and international arms dealer Adnan Khashoggi and on dealings made in his presence by Khashoggi.

Khashoggi, a Saudi Arabian who investigators have found played a significant role in financing the early U.S. arms shipments to Iran, was serving as Fahd's emissary in the deals, Bamieh said.

Bob Shaheen, Khashoggi's executive assistant in the United States, said the charge was "absolutely untrue" and he was "surprised that Bamieh's making statements like that."

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Bob Shaheen, Khashoggi's executive assistant in the United States, said the charge was "absolutely untrue" and he was "surprised that Bamieh's making statements like that."

Habib Shaheen, chief spokesman for the Saudi Royal Embassy, declined comment on Bamieh's assertions, saying, "We do not want to dignify such rubbish with an answer."

Bamieh describes himself as a former "dear friend" of the king who became a critic of Fahd after being detained under armed guard in Saudi royal palaces for 133 days last year as a result of a bitter business dispute.

He was one of the first to assert Fahd secretly helped fund the Contra rebels in Nicaragua, a charge denied at the time by the Saudis but later confirmed by the Senate and House committees investigating the Iran-Contra affair.

Bamieh said Fahd sought to finance Iran's weapons purchases as part of a broad strategic effort to warm his own relations with Khomeini's revolutionary government. Fahd wanted to ingratiate himself for security reasons because he feared that Iraq, a Saudi ally, would lose its war with Iran, Bamieh said.

The businessman said he had no idea whether the Reagan administration knew Fahd was helping fund the six documented Iranian purchases of missiles and spare parts in 1985 and 1986.

White House spokesman Marlin Fitzwater said Tuesday that "none of us ever heard of Saudi involvement" in the arms deals.

In making the payments, Bamieh said, Fahd routed millions of dollars through Khashoggi to Israeli middlemen, who arranged for Israel to provide much of the arms on behalf of the United States.

Thus the tale spun by Bamieh is one where both the Iranian and Saudi governments, at their highest levels, were dealing extensively with their professed archenemy, Israel.

Bamieh's assertion is the latest in which he has linked Saudi Arabia to secret dealings on behalf of the United States. In recent weeks, he has said Fahd funneled hundreds of millions of dollars to anti-communist movements worldwide in an "understanding" by which the administration persuaded Congress to approve the 1981 sale of sophisticated AWACS radar planes to Saudi Arabia.

Bamieh said he first learned of Saudi financing of the Iran arms deals on two occasions, the first involving Mohammed Al-Suliaman, chief of the king's private office and one of the two Fahd intimates involved in the business dispute with Bamieh.

During a visit to Jeddah, Saudi Arabia, in July or August of 1985, Bamieh said, Al-Suliaman asked him to delay a scheduled meeting for two or three days because Al-Suliaman had been directed to fly to Geneva "to advance money to Khashoggi to assist in the release of American hostages."

Bamieh said Al-Suliaman told him, "It's something important to our country and yours, so wait until I get back."

When Al-Suliaman returned, Bamieh said, he remarked that he had accomplished his mission. The \$1 million sale of 100 TOW missiles to Iran, the first of the arms deals, occurred a short time later.

During his lengthy detention in 1986, Bamieh said, he was permitted to visit Khashoggi, a longtime friend, at his home in Jeddah. He said while chatting with Khashoggi June 28, 1986, the arms dealer phoned Al-Suliaman and described visiting the National Commercial Bank in Jeddah earlier in the day.

Bamieh quoted Khashoggi as telling Al-Suliaman he had "relayed to (the bank) his majesty's instructions regarding the money that the king authorized," but the bank had demanded written instructions from the king.

Bamieh said Khashoggi requested such instructions, then dialed the king's eldest son, Prince Faisal bin Fahd, at the summer capital in Taif and asked him to remind Fahd to issue the instructions "for our mutual benefit." Bamieh said Khashoggi and the prince were business partners in some of the deals.

"I knew from people who worked for Khashoggi that he picked up \$30 million to \$35 million from the National Commercial Bank the next day," Bamieh said.

He also asserted Khashoggi visited Israel in 1985 and 1986 on the king's instructions to try joining forces with Israeli officials to arrange the arms sales -- an assertion also denied by Khashoggi's spokesman.

Bamieh describes himself as a former "dear friend" of the king who became a critic of Fahd after being detained under armed guard in Saudi royal palaces for 133 days last year as a result of a bitter business dispute.

He was one of the first to assert Fahd secretly helped fund the Contra rebels in Nicaragua, a charge denied at the time by the Saudis but later confirmed by the Senate and House committees investigating the Iran-Contra affair.

Bamieh said Fahd sought to finance Iran's weapons purchases as part of a broad strategic effort to warm his own relations with Khomeini's revolutionary government. Fahd wanted to ingratiate himself for security reasons because he feared that Iraq, a Saudi ally, would lose its war with Iran, Bamieh said.

The businessman said he had no idea whether the Reagan administration knew Fahd was helping fund the six documented Iranian purchases of missiles and spare parts in 1985 and 1986.

White House spokesman Marlin Fitzwater said Tuesday that "none of us ever heard of Saudi involvement" in the arms deals.

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Thus the tale spun by Bamieh is one where both the Iranian and Saudi governments, at their highest levels, were dealing extensively with their professed archenemy, Israel.

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(End of Article.)

The Associated Press

July 1, 1987, Wednesday, AM cycle

HEADLINE: Businessman Says Saudis Sought His Help For Angolan Rebels

BYLINE: By JOAN MOWER, Associated Press Writer

BODY:

An American businessman recounted Wednesday how Saudi officials tried to enlist his help in aiding anti-communist Angolan rebels at a time the U.S. government was barred from assisting the guerrillas.

Sam Bamieh said his Saudi contacts told him American officials were involved in the projects, but he said he never talked personally with anyone from the U.S. government about aid for the Angolan rebels.

Rep. Howard Wolpe, D-Mich., said Bamieh's testimony _ along with other evidence _ strongly suggests the Reagan administration violated or circumvented the ban on U.S. government help for the guerrillas.

Wolpe is chairman of the House Africa subcommittee, which held a hearing on possible violations of the Clark Amendment, the law that forbade direct or indirect U.S. assistance between 1976 and 1985 to UNITA rebels seeking to topple the Cuban-backed Angolan government.

Although Wolpe said there was a "compelling body of circumstantial evidence" indicating the ban had been breached, Rep. Dan Burton, R-Ind., questioned Bamieh's motives and grilled him on how his story might be verified.

"This gentleman has an ax to grind," said Burton, noting that Bamieh is embroiled in a legal battle in California over a business deal with two Saudis that went sour.

"He has come here to bash the president and to bash the Saudis," Burton said.

But Bamieh, a Republican from San Mateo, Calif., said he has been called by the subcommittee to testify, not the other way around. He was put under oath before he testified. Bamieh, a naturalized American who was born in Jerusalem, has had long-time business ties to the Middle East, including Saudi Arabia.

Bamieh recently was the star witness as another House subcommittee hearing into reports about the mistreatment of Americans in Saudi Arabia. The naturalized U.S. citizen whose family had ties with the Saudi royal family testified that he was held against his will in a palace for 133 days in 1986.

Wolpe said that regardless of Bamieh's business problems, no one has come forward to challenge his story about Saudi aid to the Angolan rebels.

Indeed, Jonas Savimbi, the head of UNITA, said in an interview six years ago that Saudi Arabia was one of the countries that had given financial help to his movement.

Saudi officials have called Bamieh's allegations of mistreatment preposterous. The Saudis never have confirmed publicly that they have given aid to anti-communist movements in Angola, Nicaragua, Afghanistan or elsewhere. But they have denied violating other countries' laws and said they have abided by their own codes.

Wolpe said Prince Bandar Bin Sultan, the Saudi ambassador, did not respond to the subcommittee's request to testify.

Bamieh made the following assertions:

_In November 1981, Prince Fahd, who later became the king, told Bamieh that he was pleased Congress had agreed to sell AWACS surveillance planes to the kingdom. In exchange for the AWACS, Fahd said, "We will ... help you guys fight anti-communist movements," according to Bamieh.

_In 1983, Bandar asked Bamieh if he would go into business with Richard V. Secord and Albert Hakim to bid on a security project at a Saudi airport. Secord and Hakim were key figures in the plan to channel money from the sale of U.S. weapons to Iran to the Contra rebels fighting Nicaragua's leftist government. The business relationship never was cemented because the three did not get the contract.

_In 1983, Saudi officials asked Bamieh to funnel money to Morocco for the training of UNITA guerrillas. The Saudis said former CIA Director William Casey was aware of the plan, Bamieh said. Casey died in May.

_In February 1984, Bandar approached Bamieh in Cannes, France, asking him to set up an offshore company that would supply goods and services to anti-communist movements and oil to South Africa. Bamieh said he declined, even though Bandar said, "Don't worry about the legalities" because Casey was discussing the situation with King Fahd.

Rep. James H. Bilbray, D-Nev., said he was interested in the testimony, but, "I don't think there is enough here to really warrant further investigation."

Wolpe, however, said the subcommittee would meet to decide the next step, possibly further investigation. "We don't know where it will lead," he said.

July 2, 1987, Thursday, PM cycle

HEADLINE: Congressman Says Laws Possibly Broken In Saudi Aid To Angolan Rebels

BYLINE: By JOAN MOWER, Associated Press Writer

Testimony from a California businessman about possible U.S. government involvement in Saudi aid to Angolan rebels before 1985 suggests laws were broken, a congressional subcommittee chairman says.

Rep. Howard Wolpe, D-Mich., said statements by Sam Bamieh before his House Foreign Affairs subcommittee on Africa provided "strong suggestions" of illegal activity. Wolpe said additional circumstantial evidence tended to corroborate the assertions of Bamieh, the sole witness.

Wolpe convened the hearing to investigate "persistent and disturbing reports" that the Reagan administration violated or circumvented the 1976-1985 congressional ban on direct or indirect U.S. help for the anti-communist UNITA fighters.

Bamieh said his Saudi contacts told him American officials were involved in the projects, but he said he never talked personally with anyone from the U.S. government about aid for the Angolan rebels.

Bamieh, 48, who claims to know the inside workings of the secretive Saudi royal family, has testified several times on Capitol Hill about the Saudis.

On June 15, Bamieh testified before the Middle East subcommittee, which looked at reports Americans have been mistreated in Saudi Arabia.

"This gentleman has an ax to grind," said Rep. Dan Burton, R-Ind., questioning Bamieh's motives for appearing at the hearing. Burton urged the panel not to pursue the Angola issue further.

"He has come here to bash the president and to bash the Saudis," he said.

While Rep. James H. Bilbray, D-Nev., said he was interested in the testimony, he didn't "think there is enough here to really warrant further investigation."

Bamieh, a naturalized American born in Jerusalem, has done business in the Middle East for years. His problems with the kingdom started last year when he said he was confined against his will at a Saudi palace for 133 days.

Related to his confinement was a business dispute in which Bamieh sued two confidants of the royal family. The suit was dismissed in California in February, a decision Bamieh vowed to appeal.

Wolpe said the subcommittee would meet to decide the next step, possibly further investigation. "We don't know where it will lead," he said.

Joining Wolpe was Rep. Ted Weiss, D-N.Y., who said the issue should be pursued "wherever it may lead."

Saudi officials have called Bamieh's allegations of mistreatment preposterous. The Saudis never have confirmed publicly that they have given aid to anti-communist movements in Angola, Nicaragua, Afghanistan or elsewhere. But they have denied violating other countries' laws and said they have abided by their own codes.

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(c) 1987 Chicago Tribune, July 9, 1987

HEADLINE: U.S.-SAUDI SECRET DEAL DESCRIBED

BODY:

An Arab-American businessman has said that high officials of the Saudi Arabian government told him they had agreed to supply aid to anticommunist guerrillas in Angola, Nicaragua and Afghanistan at the request of the Reagan administration.

Testifying under oath Wednesday before the House Foreign Affairs subcommittee on Africa, the businessman, Sam Bamieh, quoted Saudi officials as saying the aid was provided in return for the administration's controversial decision to sell AWACS reconnaissance planes to the Saudis in 1981.

During the period in question, U.S. law prohibited direct or indirect U.S. assistance to the Angolan rebels.

Spokesmen for the White House and the Saudi Embassy rejected Bamieh's assertions as untrue, but they declined to discuss them in detail.

Bamieh acknowledged that no U.S. officials had ever confirmed to him the accuracy of the statements made to him by the Saudis and that he did not know whether the aid was ever delivered.

Even the subcommittee chairman, Rep. Howard Wolpe (D., Mich.), a strong critic of the Reagan administration, said Bamieh's testimony did not by itself prove that the Reagan administration had violated the ban on aid to the Angolan rebels.

Bamieh, 48, described himself as a Palestinian-born businessman who now lives in northern California. He said he is a Republican, a supporter of President Reagan and a onetime friend of several members of the Saudi royal family.

In 1983, Bamieh testified, he was told by a Saudi envoy named Ali Ben Mussallam that the Saudis had given \$50 million to the Moroccan government in 1982 to pay for training and equipping Angolan rebels in Morocco.

Bamieh said he met later that year with Mussallam in Cannes, France. During that meeting, Bamieh said, Mussallam outlined a plan to provide additional aid to the rebels and said he had discussed the plan with then-CIA Director William Casey in New York a few weeks earlier.

Proprietary to the United Press International, September 4, 1987

HEADLINE: Documents detail Khashoggi Iran arms transaction

BYLINE: By TOM HARVEY

BODY:

In a diagram filed in federal bankruptcy court, Saudi Arabian arms dealer Adnan Khashoggi allegedly mapped how he would obtain \$10 million to finance a secret U.S. arms deal with Iran last year from an offshore company managed by two Canadian investors.

But the new document fails to answer the murky question of whether the Canadian businessmen put up the \$10 million -- or, if they did not, who was the true source of the funds.

Khashoggi told the New York Times last March that two months before the Iran-Contra scandal broke, he concocted a story that the Canadian businessmen were angry and demanding repayment of their loan to pressure the administration to reimburse him.

Khashoggi has said he provided the financing for the Iran deals, which are at the center of the scandal being investigated by Congress and a special prosecutor.

Yet the diagram describes Khashoggi's effort to obtain a \$10 million loan from an off-shore company, which was managed by the Canadians and served as a front for a religious swami from India. The document, papers filed in connection with the bankruptcy of Khashoggi's U.S. holding company, Triad America Corp., and seven Triad subsidiaries, indicated he planned to pledge Triad assets as collateral.

Court papers also included a March 6, 1986, agreement in which Khashoggi pledged stock from his Triad companies in exchange for the \$10 million arms loan from Vertex Finances, S.A., controlled by Canadian businessmen Donald Fraser and Walter Ernest Miller.

Former Triad Executive Vice President Manny Floor, in a deposition in the bankruptcy case, said he was present when the \$10 million loan agreement was signed.

"The way the loan was going to be structured is Vertex would make a loan to Adnan for \$10 million," Floor said. "Adnan would advance the \$10 million to a company called Trivert, which is Triad and Vertex.

"And Trivert would put the money into the chain of transactions which would facilitate arms sales between the United States -- I shouldn't say that, I didn't know it was the U.S. and it (a document) doesn't say that -- but the sale with Iran."

Khashoggi told the Times that Saudi money was the principal source of funding for the Iranians. American businessman Sam Bamieh, who describes himself as a former confidant of Saudi King Fahd and a friend of Khashoggi, told United Press International the Saudis actually helped Iran pay for the arms, using Khashoggi as its emissary. The Saudi government has denied the allegation.

According to Floor, Khashoggi's illustration shows the money would go from his Triad International Marketing, represented by "TIM," to a company known as either Garnet or Garnett, controlled by Khashoggi.

The \$10 million -- apparently shown as \$10,000 on the drawing -- would go to "Y," which represented the United States. The United States would deliver the arms to Iran, which would send \$11 million to Iranian middleman Manucher Ghorbanifar, who passed it onto the Swiss bank Credit Suisse.

From the bank, the \$11 million would return to Garnet and back to Khashoggi and the lenders, who would split the profit 50-50. Ghorbanifar's company, BCCI, also would share part of the profit, Floor said.

Floor, in describing the meeting, said, "And Adnan was explaining that the Iranians -- that the buyers were very wary and that this was a highly sensitive relationship and that everybody wanted proof of everybody else's good will. And the people who had the arms didn't want to release them until they got the money. The people who had the money didn't want to pay for them until we got delivery. And it required a flow of cash."

The \$10 million loan is one of five loans made to Khashoggi by Vertex, Sarsvito, controlled on behalf of the unnamed swami by Miller, and Euro Commercial, a Cayman Islands company linked to Miller and Fraser, Floor said.

Court records also contain the Iran arms loan agreement between Khashoggi and Vertex, showing he pledged 1.2 million shares of Triad America in exchange for the loan.

Leonard Gumport, the court-appointed examiner looking into Triad financial dealings, said Friday he knew of no other instance in which Triad assets had been pledged for loans connected to the U.S. arms deals.

Triad America and eight subsidiaries filed for bankruptcy in Los Angeles in January. Seven of the cases were transferred to Salt Lake City in May.

Proprietary to the United Press International 1987

November 14, 1987, Saturday, AM cycle

HEADLINE: CIA report: Syrians plotted Moslem leader's death

BYLINE: By GREGORY GORDON

BODY:

Top-secret CIA reports in 1985, conflicting with author Bob Woodward's recent assertions, said Syria masterminded an assassination attempt against a radical Moslem leader without agency cooperation, U.S. intelligence officials say.

But California businessman Sam Bamieh, who describes himself as a former close friend of Saudi King Fahd, said he has evidence that reports of Syria's involvement were part of a Saudi cover story and that Woodward's report in his new book is largely correct.

Woodward, an assistant managing editor at The Washington Post, described the unsuccessful attempt to kill Hezbollah leader Sheik Fadlallah, whose organization bombed several American facilities in Lebanon, in his book, "Veil: The Secret Wars of the CIA 1981-1987."

According to Woodward, whose book is based in part on 48 conversations with former CIA director William Casey, Casey secured \$3 million from King Fahd to finance the March 1985 assassination attempt. However, the car bomb intended for Fadlallah missed its target and killed 80 people in a Beirut suburb.

The apparent conflict in the accounts of administration intelligence officials and Bamieh reflects the difficulty of tracing clandestine operations through a smokescreen of cover stories.

U.S. intelligence officials have told United Press International that, soon after the bombing, the CIA reported that Syria acted without agency assistance in initiating the assassination attempt.

The officials said a CIA station in the Middle East sent two or more top-secret "blue-border" reports to agency headquarters in late 1985. The reports said Syria communicated with a Christian cell in the Lebanese security forces in instigating the assassination attempt, the officials said.

CIA headquarters, in turn, circulated the closely held reports to senior officials in the State Department, Pentagon and White House, the officials said. The sources said the reports were based on what were considered highly reliable human-intelligence accounts.

Two officials who reviewed the reports said they and other U.S. officials involved believed them at the time, and many still believe them today.

"It makes sense," one official said. "The Syrians were trying to control Lebanon and the Hezbollah was beholden to the Iranians, outside Syrian control."

These sources also scoffed at Woodward's assertion that Casey had a role in instigating the bombing attack. They said that, shortly before the assassination attempt, the CIA ended its relationship with the Lebanese security forces because U.S. officials believed the agency could not control the Lebanese forces' propensity for random killing.

Deputy CIA director John McMahon reported to Congress at the time that the CIA had no role in the episode, and a House Intelligence Committee investigation concluded in June 1985 that McMahon was telling the truth, congressional sources said.

The CIA is barred by executive order from engaging in assassinations.

Bamieh's account of Saudi involvement is the first on-the-record assertion that Casey helped hatch an assassination attempt against Fadlallah.

Bamieh, of San Mateo, Calif., said in a UPI interview six weeks before Woodward's book was released that he was told by "very high sources" in the Saudi royal family in late 1984 that such an attack was being considered.

He said he warned these officials that such a scheme might be uncovered. They told him, however, that Prince Bandar bin Sultan, the Saudi ambassador to the United States, masked the Saudi role by "passing out rumors" blaming the attack on Syria, Lebanese Christians, the United States or Israel, he said.

Bamieh said that after the attack, he asked the Saudi royal family officials, "What the hell is this?" He said they denied that Saudi Arabia had any role in the attack, characterizing the previously discussed scheme as "just a plan."

"If Woodward didn't come up with his story," he said, "I would continue to believe them."

Also tending to support Woodward's account was a report of Saudi involvement in the bombing that appeared in the Lebanese magazine Alkifah Alarabi weeks before the book was released.

The Saudi royal family has denied the allegations "categorically," according to a press release put out by the Saudi embassy.

The Syrian embassy did not respond to a request for comment.

Homecoming for a Queen

White House Welcomes Jordan's King Hussein and Former Washingtonian Noor

By Lois Romano
and Martha Sherrill
Washington Post Staff Writers

The sparkle and glamor of royalty touched the Bush White House for the first time yesterday evening.

When King Hussein of Jordan floated through the North Portico with his American-born queen, Noor. It's been nearly three years since this royal couple set foot in the grand house on Pennsylvania Avenue and, of course, there was no hint of an earlier strain.

Indeed, the toasts were devoted to friendship and hope.

"War must give way to peace," said George Bush in a warm toast at

the dinner in Hussein's honor. "This visit . . . comes at a crucial moment . . . Let's reduce suspicion and prepare the way for negotiations which will lead to the comprehensive settlement that everybody wants," he said.

"I will work with you, sir . . . to finalize a peace that is so secure that not a single child will know the horrors of battle."

The monarch's reply expressed an equally strong commitment to peace. "It is clear that the kinder, gentler America of which you have spoken begins in this house," Hussein said. "As I assured you this morning, Jordan will cooperate closely with the United States to

achieve a just, lasting and comprehensive peace. We will support you in all your endeavors."

Moments later, at the postdinner social gathering, Bush commented on the explosion that tore through the battleship USS Iowa yesterday, killing 47. "It's so tragic that I don't have anything profound to say except to express grief," he said. "There are no easy answers—we still don't know. I just want to express my sincerest regret over the young lives lost."

Hussein arrived here on Monday, the third Middle East leader in three weeks to come through Washington for Arab-Israeli peace strategy talks. Although Hussein's involvement is

considered crucial to Arab-Israeli peace, he has resisted an official trip to Washington until now because he reportedly has been disturbed with the United States' actions—or lack of them—in his region's conflict.

But by yesterday, all seemed smoothed over as His Majesty broke bread with his sixth U.S. president, posed for photos and talked publicly of progress. After the serious matters were dispensed with in the morning and everyone finished praising each other, Bush treated his guest to a tour of Mount Vernon in what has become the president's "Let's do Washington" approach to foreign visitors. Egyptian President

See DUNN, C12, Col. 3

Hani Mubarak got to go to a baseball game earlier in the month, and Israeli Prime Minister Yitzhak Shamir was invited to the Air & Space Museum for a screening of the acclaimed movie "To Fly."

Like the events in honor of Mubarak and Shamir, last night's affair was billed as a "working dinner" rather than a more ceremonial state dinner. But of the three, this seemed the most exciting, in large part because of the presence of Queen Noor.

The Huseinys were welcomed to the White House by President and Barbara Bush at about 7:15. Barbara Bush, like one of her inaugural spouses, But it was Noor who stole the show in a working navy chiton gown with a white underlay. Her honey-colored hair was coiffed into a full French twist. The 37-year-old willowy queen towered nearly a head over her husband. The cameras were fixated on her.

She refused to say who designed her dress. "When I say, it becomes the focus of the story," she said, with a smile that wouldn't budge.

The former Lisa Halsey has long been a social and sentimental favorite of Washington, her hometown. Members of her family—her father and her mother, who are divorced, as well as her sister and brother—were included on the guest list last night, as in the past.

The 120 and some guests, dressed for a regal occasion, were invited to dinner at the White House at 7 p.m. but began straggling through the side door East Wing entrance at 7:15 and kept arriving until as late as 7:45. Some never made it to the proper entrance. Sen. Joseph Biden (D-Del.) and his wife Jill seemed a little harried as they arrived at the North Portico (the front door) at 7:40.

The affair took place on Passover, which could have kept Jews from attending. According to Anna Peres, Barbara Bush's press secretary, the date was selected to accommodate Hussein. The only guest to request a special meal, Peres said, was Minister Rostowitch, in observance of the Russian Orthodox Lent.

Gov. Tom Kean of New Jersey sat at Barbara Bush's table, along with the long and Rep. Dan Rostenkowski (D-Ill.). "You couldn't help but talk about what's going on in Congress," said Kean. "It's sad—it's not a very pleasant place to work right now."

"You can't be happy about what's happening to Jim Wright," Rostenkowski offered a minute later. "There, a guy has 35 years of public service and all of a sudden his life is passing before him.... Tragedies and trials like this do not help government function."

One of Bush's 1988 GOP competitors—Pat Robertson—was also on hand. Was it bitterness coming (to White House like that) he was asked.

The sweet part is that George Bush the president said he has to deal with the budget, the deficit, and deal with the Palestinian problem," he said. "I can go back to being a television commentator."

Movie director George Lucas turned up on the arm of Queen Noor's

after Allen Halsey. There was some joking on the White House lawn that they are currently an item.

Peres asked what his connection to Israel is, replied, "Because we just finished filming a movie there—Indiana Jones and the Last Crusade."

Chicago Bears coach Mike Ditka—31) always howls and terrific, too—shared with his wife Diana and spent time talking to reporters about the new International Football League. "I'll be a great opportunity for them to learn about the game," he said, referring to the world of people out there unfamiliar with American-style football. He had traveled in Europe before and played there. He said, "I think they enjoyed what they saw, but I don't think they understood it."

Paul Baker, in a black lens dress and her Presidential Medal of Freedom, walked in with a huge smile and described one of her speeches—a demand president that was given to her by Anwar Sadat. It is inscribed with "With God" in Arabic.

Under twinkling chandeliers in the State Dining Room, the guests ate salmon and duckling from Nancy Reagan's very red china. After dinner, a byline was ushered into the East Room for a concert. National Symphony Orchestra music director and conductor Rostowitch performed with pianist Frederic Ohlen.

Josh praised the musicians and in a joking gesture he referred to Rostowitch's future concert tour of the Soviet Union, his homeland, from which he has been exiled for 15 years. "We will all watch with wonder and pride as he goes back there, the president said.

By 11, almost all the guests had trickled out past the grand staircase. As on the band played, one could see the president of the United States sitting midway on the stairs, peering through the railings with his 3-year-old granddaughter Mariah.

They both waved goodbye.

The guest list for last night's White House dinner for the king of Jordan:
King Hussein bin Talal and Queen Noor al-Hussein of the Hashemite Kingdom of Jordan

Prince Abdullah Hussein

Prime Minister Zeid Rifai and Muna Rifai

Field Marshal Sharif Zaid Shaker and Nawzat Shaker

Adnan Odeh, political adviser to King Hussein

Amer Khamash, private adviser to King Hussein

Marwan Kasim, deputy prime minister and minister of foreign affairs

Abdullah Salah, representative of Jordan to the United Nations, and Fadwa Salah

Hussein A. Hammami, ambassador of Jordan; and Silvana Hammami

Noor Izziddin

Lillian Aronow, president, Maison D'Etre

Donald J. Atwood, deputy secretary of defense-designate, and Sue Atwood

Pearl Bailey, singer, and Louis Bellson

James A. Baker, secretary of state, and Susan Baker

[Sam Bamieh, chairman of American Intertrade Group Inc., and Nida Bamieh

Sen. Joseph R. Biden Jr. (D-Del.) and Jill Biden

Randall Brooks, actress

Marvin P. Bush and Margaret Bush

Sen. Thad Cochran (R-Miss.) and Rose Cochran

Fred Cooper, of Atlanta, and Helen Cooper

Ben Crenshaw, golfer, and Julie Crenshaw

Mike Ditka, coach of the Chicago Bears, and Diana Ditka

Richard M. Fairbanks III, attorney, and Ann Fairbanks

Edwin J. Feulner Jr., president, Heritage Foundation, and Linda Feulner

Philip L. Geyelin, columnist, The Washington Post, and Sherry Geyelin
 Ed R. Haggar, of Dallas, and Patty Haggar
 Alexa Halaby, sister of Queen Noor
 Christian Halaby, brother of Queen Noor, and Betsy Halaby
 Doris Halaby, mother of Queen Noor
 Najeeb E. Halaby, father of Queen Noor, and Allison Halaby
 Paul Hare, acting assistant secretary of state for Near Eastern and South
 Asian affairs
 Ray L. Hunt, chairman, Hunt Consolidated Inc., and Nancy Ann Hunt
 Tom Kean, governor of New Jersey, and Deborah Kean
 Anthony M. Kennedy, Supreme Court justice, and Mary Kennedy

 Baine P. Kerr, Houston, and Mildred Kerr
 Nemir Kirdar and Nada Kirdar
 Jay Kislak, Kislak Co., and Jean Kislak
 George Lucas, film director and producer
 Sen. Richard G. Lugar (R-Ind.)

 Robert C. Macauley, Americares, and Leila Macauley
 Wales Madden III, Amarillo, Tex., and Abbie Madden
 Rep. Joseph M. McDade (R-Pa.) and Sarah McDade
 Keith McNamara, Columbus, Ohio, and Mary Lou McNamara
 Rep. Robert H. Michel (R-Ill.) and Corinne Michel
 Willie Morris, author

William R. Neale, Indianapolis, and Carolyn Neale

Constance B. Newman, director-designate, Office of Personnel Management

Mike Nichols, director, and Diane Sawyer, ABC-TV correspondent

David Peake, Houston, and Ann Peake

Scott Pierce, Rye, N.Y., and Jan Pierce

George Pillsbury, Minneapolis, and Sally Pillsbury

Vice President Dan Quayle and Marilyn Quayle

Joseph V. Reed Jr., chief of protocol, and Marie Reed

Marion G. (Pat) Robertson, Christian Broadcasting Network, and Dede Robertson

Rep. Dan Rostenkowski (D-Ill.) and LaVerne Rostenkowski

Mstislav Rostropovich, music director, National Symphony Orchestra

Brent Scowcroft, assistant to the president for national security affairs

John R. Silber, president of Boston University, and Kathryn Silber

Jackson T. Stephens, Little Rock, Ark., and Mary Anne Stephens

Roscoe S. Suddarth, ambassador to Jordan, and daughter Anne V. Suddarth

Joseph Sullivan, Bomont Industries, and Eileen Sullivan

John H. Sununu, chief of staff to the president, and Nancy Sununu

Prince Talal, nephew of King Hussein

Richard N. Viets, former ambassador to Jordan, and daughter Alexandra Viets

James D. Watkins, secretary of energy, and Sheila Watkins

William H. Webster, director of central intelligence

C. David Welch, director, Near Eastern and South Asian affairs, National Security Council, and Gretchen Welch

John F. Welch, chairman, General Electric Co., and Jane Welch

U.S. Says Saudis Sent U.S.-Made Arms to Iraq and 2 Other Nations

By THOMAS L. FRIEDMAN
Special to The New York Times

WASHINGTON, April 20 — The Bush Administration today confirmed reports that Saudi Arabia engaged in unauthorized transfers of American-made military equipment to Iraq, Syria and Bangladesh.

Administration officials said, however, that they had brought these unauthorized transfers to the attention of both Saudi Arabia and Congress, as required by law, and had been told by the Saudis that the shipments were "inadvertent."

A State Department spokesman, Richard Boucher, did not seem able to explain, though, how it was possible for Saudi Arabia to inadvertently transfer an undisclosed number of 2,000-pound bombs to Iraq and to Syria, and military transport vehicles to Bangladesh.

He also could not say whether the Saudis took any action to recover the American-made equipment, and seemed to suggest that the United States had brought no pressure to bear on Riyadh to get the equipment back, or on Syria or Bangladesh to return it.

"As part of the discussions with the Saudis, we went over the obligations that they had, and I would say that they understood those obligations, by saying that this had happened inadvertently, and the understanding was that they would try to insure that it did not happen again," Mr. Boucher said.

Report in Los Angeles Times

Mr. Boucher was being questioned at the daily briefing about a report in The Los Angeles Times that the Reagan Administration secretly allowed Saudi Arabia to provide American-made weapons to the Iraqi Government of President Saddam Hussein in 1986, and that the Bush Administration later al-

**Saudi Arabia
describes the
transfers as
inadvertent.**

lowed Syria and Bangladesh to take American-made military equipment left over in Saudi Arabia from the Persian Gulf war. The Los Angeles Times reported that Congress was not notified of these transfers as required under the Federal Arms Export Control Act.

Mr. Boucher said that the arms transfers were not authorized by the United States Government and that Congress had been notified in accordance with the law.

"Reports that the U.S. Government secretly approved the transfer of military equipment from Saudi Arabia to Iraq in 1986 are completely false," Mr. Boucher said. "The U.S. did receive reports that Saudi Arabia may have transferred to Iraq some U.S.-origin equipment, along with large quantities of non-U.S.-origin equipment in 1986. After Desert Storm, there were allegations of transfers to Syria and Bangladesh. We had reports that small amounts of non-lethal U.S.-origin equipment being used by these two coalition partners during the war remained with them after the war."

In each of these cases, he said, "the United States immediately brought these reports to the attention of the Saudis, and we reminded them of their obligations under the Arms Export Control Act and bilateral agreements concluded under the Arms Export Control Act. They told us that these transfers were inadvertent."

Mr. Boucher declined to specify which Congressional offices were notified, but Congressional officials said that on Aug. 14, 1986, the Speaker of the House Thomas P. O'Neill, Democrat of Massachusetts, and the chairman of the Senate Foreign Relations Committee, Richard G. Lugar, Republican of Indiana, both received classified letters explaining that Saudi Arabia had transferred a number of their British-made Lightning fighter-bombers to Iraq, and had inadvertently attached to the aircraft the 2,000-pound American-made gravity bombs that the Saudis normally use with the aircraft.

The letters, signed by William Schneider Jr., Under Secretary of State for Security Assistance, were classified, and it is not clear how widely the

lawmakers disseminated them.

On March 6, 1992, similar letters signed by Janet Mullins, the State Department's Assistant Secretary for Legislative Affairs, were sent to Speaker Thomas S. Foley, Democrat of Washington, and the Senate Foreign Relations Committee Chairman, Claiborne Pell, Democrat of Rhode Island, regarding the inadvertent Saudi transfer of American-made military vehicles to Saudi Arabia and Bangladesh. That is roughly one year after the transfers took place.

For Saudi Arabia, the disclosures could not come at a worse time — just at the moment when the Bush Administration is considering whether or not to

go ahead with a sale of 72 advanced F-15 fighter jets to Saudi Arabia.

One of the main arguments by the Administration to support arms sales to Saudi Arabia has been that if the United States does not sell the weapons, someone else will, and that at least if the United States does, it will be able to keep control over the arms and the spare parts, said Representative Mel Levine, the California Democrat who has led the opposition to the Administration's arms transfer policies.

"Even if the Saudi transfers were inadvertent, which is an explanation that one should take with a large grain of salt," Mr. Levine said, "it totally blows their argument that the way we

maintain control over these weapons is if we sell them and not someone else. One can understand why the Administration would be uncomfortable about such a report leaking at this time."

Context Explained

Administration officials, speaking only on the condition that they not be identified, argued that these transfers of military equipment had to be seen in context. In 1986, they said, the Saudis were sending all sorts of arms to Iraq to bolster it in the war with Iran, on the grounds that an Iranian defeat of Iraq could destabilize the entire region.

Sandra Charles, the former director of Middle East and South Asia affairs

at the Defense Department in 1986, said she recalled that the Saudis had gone out of their way to alert Washington about the inadvertent transfer. Other officials, though, say it was American military officials in Saudi Arabia who first detected the transfer.

"It was a small number," Miss Charles said. "It was not considered significant. The bombs were in a warehouse with equipment for other countries."

She said she could not recall whether Washington pressed Riyadh to get the bombs back, adding, "It just didn't seem very consequential at the time."

Taking Trucks Home

In the case of the transfers after the gulf war, Administration officials argued that during the war the Saudis had set up a unified transportation pool for the various coalition forces, and

apparently just let the Bangladeshis and Syrians take some of the trucks home with them.

Mr. Boucher was asked how the Saudis could twice inadvertently transfer American-made equipment.

"I think that's a point that the Saudis may wish to address," he said. "I would just say that we went to them with these. We carried out our responsibilities. We notified the Congress. They did take place spaced some five years apart and under different circumstances. But beyond that in explaining how they might have happened, I think that's for the Saudis."

The office of Saudi Arabia's Ambassador to the United States, Prince Bandar, said he was traveling and not available for comment. Asked about the matter, the Saudi Embassy's information office said, "We have nothing on this."

AK Dinner Party
8/27/91

("AK" refers to Adnan Khashoggi)

1. Mike and Jennie Rafton

Mike just left his position as President and Chairman of the Board of Central Bank. It is a billion dollar bank with branches mostly in northern California. He is also a distinguished attorney. Mike is a very creative person; one of his successful ideas was the manufacture of portable classrooms to meet the high demand of California's exploding school age population.

Jennie is a distinguished artist. Jennie and Mike live in a very, very beautiful home in Piedmont--which is across the San Francisco Bay.

2. Mayor George Christopher

The Mayor is a very distinguished gentleman of many accomplishments. When he was Mayor of San Francisco, the city was run well and was a pearl among cities of the United States. His primary business has been in the dairy industry, but he is a man of many talents.

His wife died about two years ago.

3. Bert and Jane Boeckmann

Bert is a very successful businessman. He has the largest Ford dealership in the world (which is in the Los Angeles area). He has a dozen other businesses around the world.

Bert is very active in Republican politics, both in this state and nationally.

Bert is active in civic organizations. He just left his position on the Police Commission of Los Angeles.

Bert and Jane are prominent in social, philanthropic, business, political and religious circles.

Jane is equally popular as Bert and equally active. She owns and manages a well known magazine in southern California, The San Fernando Valley Magazine.

4. Ed and Edwina Rogers

Ed just left his position as one of President Bush's chief assistants. He was both the head of his political group within the White House, and also the main assistant to Governor Sununu--the President's Chief of Staff. He is a lawyer now in private practice in Washington, DC.

Edwina just completed law school and took the bar exam. She is now

working for one of the prestigious firms in DC. She has also been active in real estate.

5. Norman and Rosemay Eckersley

Norm is the Chairman of the Board and President of Pacific Bank here in San Francisco. He was in banking in the Far East before coming to San Francisco.

6. Bassem Sarandah

Bassem works for Bechtel. He is the Business Development Representative for the Middle East.

7. Fred and Rhonda Sroka

Fred is the Corporate Secretary of AIG. As a lawyer, his specialty is tax. He worked for Arthur Andersen & Company for a while.

Rhonda is a CPA, specializing in tax.

They had a baby girl born about a year ago, their first child.

8. Jim Fleenor

Jim is the Corporate Treasurer of AIG. He is an accountant and has spent considerable time in Saudi Arabia and Micronesia. He is a veteran of the Vietnam War.

9. Tony Wilson

Tony is Director of Real Estate Operations for AIG. He manages a real estate operation in Pinole, about 20 minutes from San Francisco. He has served AIG longer than any other employee. He has traveled extensively throughout the world. Tony is an engineer.

10. Herb Ellingwood

Herb is General Counsel of AIG and Assistant to the Chairman. Herb is an attorney who has served with Ronald Reagan since Reagan was Governor of California. He also was with Reagan in the White House and served the President in many capacities. Herb also was a special assistant to three attorneys general.

He has worked throughout Europe and the Far East.

BARBOUR & ROGERS

ATTORNEYS AT LAW

Suite 1010

600 New Hampshire Avenue, N.W.

Washington, D.C. 20037

HALEY BARBOUR
ED ROGERS

(202) 333-8767
Fax (202) 338-5950

September 5, 1991

Maitre Moussa Raphael
c/o Cossa
52, Rue du Faubourg St. Honore
75008 Paris
France

Dear Moussa:

Thank you for inviting us to join the legal team of His Excellency Sheikh Kamal Adham and for the opportunity to spend so much time with him and you in Jeddah this week. It is clear to us why he is considered a man of stature and great integrity not only in Saudi Arabia but throughout the Middle East.

This letter will confirm our agreement for Barbour & Rogers to join the legal team you are constructing to represent Sheikh Kamal in the United States in the various matters arising out of First American Bankshares, etc. We will provide legal representation in conjunction with the firm of Cacheris and Towe and any other attorneys selected by you on the Sheikh's behalf in the future. It is understood this legal representation will not include public relations, political or lobbying representation.

Our fee for this representation will be \$120,000 to be paid as soon as practicable (because of your daughter's wedding, we realize this may not be until September 9 or 10) plus \$15,000 per month for 12 months beginning the end of September 1991 through the end of August 1992; plus \$25,000 per month for 12 months beginning the end of September 1992 through August 1993. Additionally Barbour & Rogers will be reimbursed all normal expenses such as long distance telephone and other telecommunications expenses, courier/FedEx, copying, travel, approved entertainment expenses, if any, etc. Such expenses shall be billed on a monthly basis beginning with the attached reimbursement request for expenses incurred during our trip to Jeddah August 31 through September 3. I have heretofore provided you the information needed to wire transfer the funds directly to the Barbour & Rogers account at Deposit Guaranty National Bank.

Maitre Moussa Raphael
September 5, 1991
Page Two

We understand and agree that you may ask us to represent Sheikh Kamal's commercial interests that may arise out of other business he has in the United States. This representation would include private and nonpolitical activities in furtherance of His Excellency's business, trade or commercial interests, whether owned personally or through corporations he owns or in which he has substantial ownership. Again, none of this will be public relations, political or lobbying activity or any effort to change, maintain or in any way affect any policies, laws or regulations of our government. Although no specific example has been mentioned, we do understand such commercial representation may arise.

We look forward to working with you and your legal team to ensure His Excellency Sheikh Kamal Adham receives the fair hearing we believe will result in his total vindication.

Sincerely,

Barbour & Rogers

by: 
Ed Rogers

Agreed to and Accepted:

979

Tabetha C. Mueller
401 South 12th Street #2018
Arlington, Virginia
22202

Cuthman

Date: 09-16-91

Date	Description	Amount
09-14-91	Videotaping of House Banking Committee Hearing on BCCI Affairs in the U.S.	
	14 hours @ \$20.00 / hour	\$280.00
	Purchase of Videotapes (4)	\$ 27.75
	<u>TOTAL:</u>	<u>\$307.75</u>

09-16-91
CLX 257

*Rec'd
10/1/91*

Provided by Mr. Edward Rogers

U.S. Department of Justice
Washington, DC 20530

Registration Statement
Pursuant to Section 2 of the Foreign Agents Registration Act of 1938,
as amended.

OSGE No. 1286-2001
Approval Expires Nov. 30, 1960

I—REGISTRANT

1. Name of the registrant.

Edward M. Rogers, Jr.

Reg # 4570

2. Business address.
600 New Hampshire Avenue, N.W., Suite 1010
Washington, D.C. 20037

3. If the registrant is an individual, furnish the following information:

- (a) Residence address.
- (b) Date and place of birth.
- (c) Present citizenship.
- (d) If present citizenship not acquired by birth, state when, where and how acquired
- (e) Occupation.

If the registrant is not an individual, furnish the following information:

- (a) Type of organization: Committee ☐ Association ☐ Partnership ☒
Corporation ☐ Other (specify) _____
- (b) Date and place of organization.
August 5, 1961; Washington, D.C.
- (c) Address of principal office
600 New Hampshire Avenue, N.W., Suite 1010, Washington, D.C. 20037
- (d) Name of person in charge
Ed Rogers and Haley Barbour
- (e) Locations of branch or local offices in United States
None
- (f) If a membership organization, give number of members
Not Applicable

*21
11-23
12347*

(PAGE 1)

((k) List all partners, officers, directors or persons performing the functions of an officer or director of the registrant.

<i>Name</i>	<i>Residence Address</i>	<i>Position</i>	<i>Citizenship</i>
Heley Barbour	634A S, 15th Street Arlington, VA 22308	Partner	United States

(l) Which of the above named persons renders services directly in furtherance of the interests of any of the foreign principals?

None

(m) Describe the nature of the registrant's regular business or activity

Lawyer/Government Relations

(n) Give a complete statement of the ownership and control of the registrant.

50 percent equal partner

5 List all employees who render services to the registrant directly in furtherance of the interests of any of the foreign principals in other than a clerical, secretarial, or in a related or similar capacity.

<i>Name</i>	<i>Residence Address</i>	<i>Nature of Services</i>
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None

II—FOREIGN PRINCIPAL

List every foreign principal¹ for whom the registrant is acting or has agreed to act.

Name of Foreign Principal

Principal Address

Sheikh Kamal Adham

Jeddah, Saudi Arabia

III—ACTIVITIES

7. In addition to the activities described in any Exhibit B to this statement, will you engage or are you engaging now in activity on your own behalf which benefits any or all of your foreign principals? Yes ☐ No ☒

If yes, describe fully

IV—FINANCIAL INFORMATION

8. (a) RECEIPTS—MONIES

During the period beginning 60 days prior to the date of your obligation to register to the time of filing this statement, did you receive from any foreign principal named in Item 6 any contribution, income or money either as compensation or for disbursement or otherwise? Yes ☒ No ☐

If yes, set forth below in the required detail and separately for each such foreign principal an account of such monies.²

Name of Foreign Principal	Date Received	Purpose	Amount
Sheikh Kamal Adham	9/12/91	Advance on Fees	\$136,750.65

\$136,750.65

Total

¹The term "foreign principal" includes a foreign government, foreign political party, foreign organization, foreign individual and, for the purpose of registration, an organization or an individual any of whose interests are directly or indirectly supervised, directed, controlled, financed or subsidized in whole or in major part by a foreign government, foreign political party, foreign organization or foreign individual.

²A registrant is required to file an Exhibit D if he collects or receives contributions, loans, money, or other things of value for a foreign principal, as part of a fund raising campaign. There is no printed form for this exhibit. See Rule 201e.

(b) RECEIPTS—THINGS OF VALUE

During the period beginning 60 days prior to the date of your obligation to register to the time of filing this statement, did you receive from any foreign principal named in Item 6 any thing of value² other than money, either as compensation, or for disbursement, or otherwise? Yes ☐ No ☒

If yes, furnish the following information:

Name of Foreign Principal	Date Received	Description thing of value	Purpose for which received
---------------------------	---------------	----------------------------	----------------------------

9 (a) DISBURSEMENTS—MONIES

During the period beginning 60 days prior to the date of your obligation to register to the time of filing this statement, did you spend or disburse any money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 6? Yes ☐ No ☒

If yes, set forth below in the required detail and separately for each such foreign principal named including monies transmitted, if any, to each foreign principal:

Date	To Whom	Purpose	Amount
------	---------	---------	--------

(b) DISBURSEMENTS—THINGS OF VALUE

During the period beginning 60 days prior to the date of your obligation to register to the time of filing this statement, did you dispose of anything of value² other than money in furtherance of or in connection with your activities on behalf of any foreign principal named in Item 6? Yes ☐ No ☒

If yes, furnish the following information:

Date	Name of person to whom given	On behalf of what foreign principal	Description of thing of value	Purpose in giving
------	------------------------------	-------------------------------------	-------------------------------	-------------------

(c) DISBURSEMENTS—POLITICAL CONTRIBUTIONS

During the period beginning 60 days prior to the date of your obligation to register to the time of filing this statement, did you make any contribution of money or other thing of value from your own funds and on your behalf in connection with an election to any political office or in connection with any primary election, convention, or caucus held to select candidates for political office? Yes ☐ No ☒

If yes, furnish the following information:

Date	Amount or thing of value	Party or Candidate	Identify location of election, convention, etc. if any
------	--------------------------	--------------------	--

²Things of value include but are not limited to gifts, interest free loans, expense free travel, favored stock purchases, exclusive rights, favored treatment under competition, "kickbacks", and the like.

V—POLITICAL PROPAGANDA

(Section 1(i) of the Act defines "political propaganda" as including any oral, visual, graphic, written, pictorial, or other communication expression by any person (1) which is reasonably adapted to, or which the person disseminating the same believes will, or which he intends to, prevail upon, indoctrinate, convert, induce, or in any other way influence a recipient or any section of the public within the United States with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party or with reference to the foreign policies of the United States or promote in the United States racial, religious, or social dissensions, or (2) which advocates, advises, instigates, or promotes any racial, social, political, or religious disorder, civil riot, or other conflict involving the use of force or violence in any other American republic or the overthrow of any government or political subdivision of any other American republic by any means involving the use of force or violence.)

10. Will the activities of the registrant on behalf of any foreign principal include the preparation or dissemination of political propaganda as defined above? Yes ☐ No ☒

IF YES, RESPOND TO THE REMAINING ITEMS IN THIS SECTION V.

11. Identify each such foreign principal.

12. Has a budget been established or a specified sum of money allocated to finance your activities in preparing or disseminating political propaganda? Yes ☐ No ☐

If yes, identify each such foreign principal, specify amount and for what period of time.

13. Will any public relations firms or publicity agents participate in the preparation or dissemination of such political propaganda material? Yes ☐ No ☐

If yes, furnish the names and addresses of such persons or firms.

14. Will your activities in preparing or disseminating political propaganda include the use of any of the following

- | | |
|---|--|
| <input type="checkbox"/> Radio or TV broadcasts | <input type="checkbox"/> Motion picture films |
| <input type="checkbox"/> Advertising campaigns | <input type="checkbox"/> Pamphlets or other publications |
| <input type="checkbox"/> Magazine or Newspaper articles | <input type="checkbox"/> Letters or telegrams |
| <input type="checkbox"/> Press releases | <input type="checkbox"/> Lectures or speeches |
| <input type="checkbox"/> Other (specify) _____ | |

15. Will the political propaganda be disseminated among any of the following groups:

- | | |
|--|---|
| <input type="checkbox"/> Public Officials | <input type="checkbox"/> Civic groups or associations |
| <input type="checkbox"/> Legislators | <input type="checkbox"/> Libraries |
| <input type="checkbox"/> Government agencies | <input type="checkbox"/> Educational groups |
| <input type="checkbox"/> Newspapers | <input type="checkbox"/> Nationality groups |
| <input type="checkbox"/> Editors | <input type="checkbox"/> Other (specify) _____ |

16. Indicate language to be used in political propaganda:

- ☐ English ☐ Other (specify) _____

VI—EXHIBITS AND ATTACHMENTS

(17. (a) The following described exhibits shall be filed in duplicate with an initial registration statement:

Exhibit A—This exhibit, which is filed on Form CRM-157, sets forth the information required to be disclosed concerning each foreign principal named in Item 6.

Exhibit B—This exhibit, which is filed on Form CRM-155, sets forth the information concerning the agreement or understanding between the registrant and the foreign principal.

(b) An Exhibit C shall be filed when applicable. This exhibit for which no printed form is provided consists of a true copy of the charter, articles of incorporation, association, constitution, and bylaws of a registrant that is an organization. A waiver of the requirement to file an Exhibit C may be obtained for good cause shown upon written application to the Assistant Attorney General, Internal Security Division, U.S. Department of Justice, Washington, DC 20530. See Rule 201(c) and (d).

(c) An Exhibit D shall be filed when applicable. This exhibit for which no printed form is provided sets forth an account of money collected or received as a result of a fund raising campaign and transmitted for a foreign principal. See Rule 201(c).

The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.

(Type or print name under each signature)

Edward M. Rogers, Jr.

Edward M. Rogers, Jr.

(The undersigned swear(s) or affirm(s) that he has (they have) read the information set forth in this registration statement and the attached exhibits and that he is (they are) familiar with the contents thereof and that such contents are in their entirety true and accurate to the best of his (their) knowledge and belief, except that the undersigned make(s) no representation as to the truth or accuracy of the information contained in attached Short Form Registration Statement, if any, insofar as such information is not within his (their) personal knowledge.)

Subscribed and sworn to before me at

District of Columbia

this 23rd

day of

September

19 91

Cynthia A. Mills

(Signature of notary or other officer)

My commission expires

1/1/94

19

94

U.S. Department of Justice
Washington, DC 20530

Exhibit A
To Registration Statement
Under the Foreign Agents Registration Act of 1938, as amended

OMB No. (105-0003)

Privacy Act Statement. Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, dissemination report, copy of political propaganda or other document or information filed with the Attorney General under this act is a public record open to public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, D.C. One copy is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act, and copies of such documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. Finally, the Attorney General transmits an annual report to the Congress on the Administration of the Act which lists the names of all agents and the nature, sources and content of the political propaganda disseminated or distributed by them. This report is available to the public.

Public Reporting Burden. Public reporting burden for this collection of information is estimated to average 49 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Criminal Division, U.S. Department of Justice, Washington, D.C. 20530, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

*Furnish this exhibit for EACH foreign principal listed in an initial statement
and for EACH additional foreign principal acquired subsequently.*

1. Name and address of registrant		2. Registration No.
Edward M. Rogers, Jr. 600 New Hampshire Avenue, N.W., Suite 1010, Washington, D.C. 20037		25570
3. Name of foreign principal	4. Principal address of foreign principal	
Sheikh Kamal Adham	Jeddah, Saudi Arabia	
5. Indicate whether your foreign principal is one of the following type:		
<input type="checkbox"/> Foreign government <input type="checkbox"/> Foreign political party <input type="checkbox"/> Foreign or <input type="checkbox"/> domestic organization. If either, check one of the following: <div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Association </div> <div> <input type="checkbox"/> Committee <input type="checkbox"/> Voluntary group <input type="checkbox"/> Other (specify) _____ </div> </div> <input checked="" type="checkbox"/> Individual—State his nationality <u>Saudi</u>		
6. If the foreign principal is a foreign government, state:		
a) Branch or agency represented by the registrant		
b) Name and title of official with whom registrant deals		
7. If the foreign principal is a foreign political party, state:		
a) Principal address		
b) Name and title of official with whom registrant deals		
c) Principal aim		

8. If the foreign principal is not a foreign government or a foreign political party,

a) State the nature of the business or activity of this foreign principal

(- Extensive multi-national corporate and financial interests, with his principal interest being a Saudi Arabian-based construction company.

b) Is this foreign principal

Owned by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☒

Directed by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☒

Controlled by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☒

Financed by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☒

Subsidized in whole by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☒

Subsidized in part by a foreign government, foreign political party, or other foreign principal Yes ☐ No ☒

9. Explain fully all items answered "Yes" in Item 8(b). (If additional space is needed, a full insert page may be used.)

(

10. If the foreign principal is an organization and is not owned or controlled by a foreign government, foreign political party or other foreign principal, state who owns and controls it

(

Date of Exhibit A	Name and Title	Signature
September 20, 1991	Edward M. Rogers, Jr. Partner	<i>Edward M. Rogers, Jr.</i>

U.S. Department of Justice
Washington, DC 20530

Exhibit B
To Registration Statement
Under the Foreign Agents Registration Act of 1938, as amended

FORM NO. 100-1000
Optional Form No. 10, 1951

INSTRUCTIONS: A registrant must furnish as an Exhibit B copies of each written agreement and the terms and conditions of each oral agreement with his foreign principal, including all modifications of such agreements; or, where no contract exists, a full statement of all the circumstances by reason of which the registrant is acting as an agent of a foreign principal. This form shall be filed in triplicate for each foreign principal named in the registration statement and must be signed by or on behalf of the registrant.

Privacy Act Statement: Every registration statement, short form registration statement, supplemental statement, exhibit, amendment, dissemination report, copy of political propaganda or other document or information filed with the Attorney General under this act is a public record open in public examination, inspection and copying during the posted business hours of the Registration Unit in Washington, D.C. One copy is automatically provided to the Secretary of State pursuant to Section 6(b) of the Act and copies of such documents are routinely made available to other agencies, departments and Congress pursuant to Section 6(c) of the Act. Finally, the Attorney General transmits an annual report to the Congress on the Administration of the Act which lists the names of all agents and the nature, sources and content of the political propaganda disseminated or distributed by them. This report is available to the public.

Public Reporting Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Registration Unit, Criminal Division, U.S. Department of Justice, Washington, DC 20530, and in the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Name of Registrant	Name of Foreign Principal
Edward M. Rogers, Jr.	Sheikh Kamal Adham

Check Appropriate Boxes:

- 1 ☒ The agreement between the registrant and the above-named foreign principal is a formal written contract. If this box is checked, attach three copies of the contract to this exhibit.
- 2 ☐ There is no formal written contract between the registrant and foreign principal. The agreement with the above named foreign principal has resulted from an exchange of correspondence. If this box is checked, attach three copies of all pertinent correspondence, including a copy of any initial proposal which has been adopted by reference in such correspondence.
- 3 ☐ The agreement or understanding between the registrant and the foreign principal is the result of neither a formal written contract nor an exchange of correspondence between the parties. If this box is checked, give a complete description below of the terms and conditions of the oral agreement or understanding, its duration, the fees and the expenses, if any, to be received.

- 4 Describe fully the nature and method of performance of the above indicated agreement or understanding.

Provide legal representation for Sheikh Kamal in the United States, in conjunction with other attorneys, on the various matters arising out of First American Bankshares, Inc. Possible representation of Sheikh Kamal's commercial interests that may arise out of other business he has in the United States.

-2-


5. Describe fully the activities the registrant engages in or proposes to engage in on behalf of the above foreign principal.

Because of the nature of the legal investigations within the Executive Branch and in Congress related to Sheikh Kamal's interests associated with the BCCI affair, it may be necessary for me to perform duties that could "border on political." Therefore, I am taking this step to register as a foreign agent in the event that I engage in such activity.

6. Will the activities on behalf of the above foreign principal include political activities as defined in Section 1(o) of the Act?

Yes ☐ No ☒

If yes, describe all such political activities indicating, among other things, the relations, interests or policies to be influenced together with the means to be employed to achieve this purpose.

Date of Exhibit B	Name and Title	Signature
September 20, 1991	Edward M. Rogers, Jr. Partner	

*Political activity as defined in Section 1(o) of the Act means the dissemination of political propaganda and any other activity which the person engaging therein believes will, or which he intends to, prevail upon, seduce, influence, convert, induce, persuade, or in any other way influence any agency or official of the Government of the United States or any action of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the interests or public interests, policies, or relations of a government of a foreign country or a foreign political party.

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ATTORNEYS AT LAW

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600 New Hampshire Avenue, N.W.
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HALEY BARBOUR
ED ROGERS

(202) 333-8767
Fax (202) 338-5950

September 5, 1991

Maitre Moussa Raphael
c/o Cossa
52, Rue du Faubourg St. Honore
75008 Paris
France

Dear Moussa:

Thank you for inviting us to join the legal team of His Excellency Sheikh Kamal Adham and for the opportunity to spend so much time with him and you in Jeddah this week. It is clear to us why he is considered a man of stature and great integrity not only in Saudi Arabia but throughout the Middle East.

This letter will confirm our agreement for Barbour & Rogers to join the legal team you are constructing to represent Sheikh Kamal in the United States in the various matters arising out of First American Bankshares, etc. We will provide legal representation in conjunction with the firm of Cacheris and Towey and any other attorneys selected by you on the Sheikh's behalf in the future. ~~This understanding is not intended to create a permanent relationship, political or otherwise, between Barbour & Rogers and the Sheikh's legal team.~~

Our fee for this representation will be \$120,000 to be paid as soon as practicable (because of your daughter's wedding, we realize this may not be until September 9 or 10) plus \$15,000 per month for 12 months beginning the end of September 1991 through the end of August 1992; plus \$25,000 per month for 12 months beginning the end of September 1992 through August 1993. Additionally Barbour & Rogers will be reimbursed all normal expenses such as long distance telephone and other telecommunications expenses, courier/FedEx, copying, travel, approved entertainment expenses, if any, etc. Such expenses shall be billed on a monthly basis beginning with the attached reimbursement request for expenses incurred during our trip to Jeddah August 31 through September 3. I have heretofore provided you the information needed to wire transfer the funds directly to the Barbour & Rogers account at Deposit Guaranty National Bank.

Maitre Moussa Raphael
September 5, 1991
Page Two

We understand and agree that you may ask us to represent Sheikh Kamal's commercial interests that may arise out of other business he has in the United States. This representation would include private and nonpolitical activities in furtherance of His Excellency's business, trade or commercial interests, whether owned personally or through corporations he owns or in which he has substantial ownership. Again, none of this will be public relations, political or lobbying activity or any effort to change, maintain or in any way affect any policies, laws or regulations of our government. Although no specific example has been mentioned, we do understand such commercial representation may arise.

We look forward to working with you and your legal team to ensure His Excellency Sheikh Kamal Adham receives the fair hearing we believe will result in his total vindication.

Sincerely,

Barbour & Rogers

by: 
Ed Rogers

Agreed to and Accepted:

BALCH & BINGHAM

ATTORNEYS AND COUNSELORS

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PERRY D. SMITHLEIGH, JR.
FELTON W. SMITH
GLENN D. WOODELL
STEPHEN E. SMITHHEAD
JOHN H. MOORE
SCHUTLER A. BAKER
ONE-800
NOTED TO REACT
IN GEORGIA ONLY

October 2, 1991

Mr. John H. Vogel
Patton, Boggs & Blow
2550 M Street, N.W.
Washington, D.C. 20037

Dear Mr. Vogel:

At Ed Rogers' request, on behalf of Sheikh Kamal Adham, we have reviewed a draft dated September 13, 1991, of the proposed Trust Agreement between Credit and Commerce American Holdings N.V., a Netherlands Antilles corporation ("CCA"), and an unspecified party as Trustee (the "Trust Agreement"). We have also reviewed a letter from the Federal Reserve Board dated September 17, 1991, commenting on the Trust Agreement.

As we understand the arrangement, pursuant to the Trust Agreement, CCA will deposit all of the outstanding capital stock of Credit and Commerce American Investments B.V., a Netherlands corporation ("CCA") into an irrevocable trust (the "Trust"). The Trust Agreement recites that CCA indirectly owns all of the outstanding capital stock of First American Bankshares, Inc., a Virginia bank holding company ("First American"). The Trust Agreement further provides that a group of corporations designated as "BCCI" holds security or other property interests in certain shares of CCA. The stated purpose of the Trust Agreement is to cause CCA to deposit all of the outstanding capital stock of CCA into an independent, irrevocable trust in order to provide for the divestiture of any interest of BCCI in CCA and its subsidiaries. Sheikh Adham and Adham Corp. own approximately 17% of the outstanding shares of CCA. Sheikh Zayed controls approximately 78% of the voting stock of CCA.

Prior to commenting on the Trust Agreement, we point out that we have advised Sheikh Adham that a separate trust for his CCA stock would be more appropriate than

BALCH & BINGHAM

Mr. John H. Vogel
October 2, 1991
Page 2

the single Trust for the stock of CCAI. We have not been told Sheikh Adham's decision on this issue.

Subject to the above, this letter addresses changes in the proposed document which should be made in order to afford proper treatment of Sheikh Adham's interest as a shareholder of CCAH.

(a) **Shareholder Representative.** Section 1.27 of the Trust Agreement provides that a majority of CCAH stockholders may elect a Shareholder Representative. (As an editorial matter, this should be changed to provide for election by holders of a majority of the stock, not by a majority of the stockholders.) The Trust Agreement requires the Trustee to consult with the Shareholder Representative on important matters, and the Shareholder Representative is given the right to make certain decisions. Sheikh Zayed owns sufficient stock in CCAH to elect his nominee as the Shareholder Representative. Since this is an extraordinary transaction, we believe that Sheikh Adham should have an effective voice regarding this issue. We suggest that the Trust Agreement could name an initial Shareholder Representative who is satisfactory to Sheikh Adham, and that successor representatives be selected from a list of individuals approved by Sheikh Adham.

(b) **Approval of CCAH Actions Relating to the Trust.** Certain other provisions of the Trust Agreement require that CCAH approve actions of the Trustee. As mentioned regarding the Shareholder Representative, since this is an extraordinary transaction, we believe that Sheikh Adham should have an effective voice regarding these matters and that his consent should be required when CCAH approves actions of the Trustee.

(c) **Operation of First American.** The Trust Agreement does not contain any standards for the Trustee to follow in operating First American. However, the Trustee will have indirect control over all corporate actions of First American and its banks. The value of CCAH and CCAI in a sale can be affected by the manner in which First American and its banks are operated. CCAH should want the banks operated to produce maximum short term value, since a sale should occur soon. The Trust Agreement should require the Trustee to operate First American in a manner which will maximize the value of First American in the short term while the Trustee is attempting to sell First American, as opposed to building long term value or, especially, seeking long term opportunities and expansion.

(d) **Sale of First American.** Section 4.4 describes the Trustee's obligation to direct First American to retain an investment banker to act as an Advisor in selling CCAI and its holdings. Since the purpose of the Trust is to sell First American, this section

BALCH & BINGHAM

Mr. John H. Vogel
 October 2, 1991
 Page 3

should be consistent with general standards applied to the directors of a company going through a sale process. However, in its comment letter, the FRB requests the deletion of provisions requiring the Trustee to maximize the value of the Trust assets to the Beneficiary, in order to expedite the sale of First American. The following comments are intended to protect the interests of Sheikh Adham by requiring the Trustee and FRB to maximize the sales price of the Trust assets. You should note that language similar to that which we propose below was deleted from the prior draft of the Trust Agreement dated 9/4a/91.

We suggest that the word "best" be inserted before the words "interests of the Beneficiary" in the third line of Section 4.4 on page 24.

Section 4.5 discusses the sale of the CCAI holdings by the Trustee. For the same reasons discussed above related to Section 4.4, we suggest the following changes:

(i) In Section 4.5(a), we suggest the addition of the following language after the first phrase "As expeditiously as possible ...": "and considering the best interests of the Beneficiary".

(ii) In Section 4.5(a), in the 9th line on page 25, we would delete the language "not materially prejudicial to the interests", and we would replace that language with "in the best interests of".

(iii) In Section 4.5(d), we suggest adding the following language in the 5th line after the word "discretion": "and having regard to obtaining the best available transaction for the Beneficiary taking into account, among other factors, the maximization of price". We note that similar language was deleted from the draft Trust Agreement dated 9/4a/91, which we reviewed earlier.

(e) **The FRB's Role Under the Trust Agreement.** The Trust Agreement requires the Trustee to consult with, or obtain the approval of, the FRB in certain circumstances. Also, the Trust Agreement provides that if the Trustee cannot sell First American before a specified period of time, then the FRB may sell First American. However, the FRB is not a party to the Trust Agreement and the Trust Agreement is not specific regarding the standards which the FRB must apply in seeking a sale or the obligations of the FRB under the Trust Agreement.

(f) **Identity of Advisors.** The Trustee is allowed to employ investment bankers, financial advisors, attorneys, and similar experts. The Trust Agreement should, at

BALCH & BINGHAM

Mr. John H. Vogel
 October 2, 1991
 Page 4

least, provide that the Trustee will consult with the shareholders of CCAH regarding preferences or objections as to individuals or companies.

(g) **Potential Claim Against Sheikh Adham.** A provision should be added to the effect that no shareholder of CCAH shall be financially responsible for any obligation of CCAH under the Trust Agreement.

(h) **Indemnity of the Trustee.** You should note that the Trust Agreement provides that CCAH will indemnify the Trustee from all losses or expenses of any kind except arising out of the gross negligence or willful misconduct of the Trustee. This indemnification may reduce the standard by which the Trustee's fiduciary duties to CCAH will be tested, including, without limitation, the duty to sell the Trust assets as described in the Trust Agreement.

(i) **Investments.** Section 4.12 outlines specific permitted investments. The parties should insure that all desirable investments are listed. For example, the Trust Agreement allows investments in direct obligations of the United States or its agencies, but does not specifically allow investment in mutual or other common funds consisting only of such investments.

(j) **Distributions of Trust Property.** Section 5.4 sets a \$5,000,000 threshold for requiring the Trustee to distribute Trust property, although the Trustee may distribute Trust property at other times in his discretion. However, in its comment letter, the FRB has requested amendments specifying that provisions allowing trust distributions will not affect any rights of the FRB to seek recourse against Trust assets.

The Trustee is required to give written notice of distributions only to the Beneficiary (CCA) and the Shareholder's Representative. The Trust Agreement should require notice to Sheikh Adham of any Trust distributions.

Pursuant to Section 4.13, the Trustee may indemnify the directors and principal officers of CCAH or its affiliates. The Trustee is required to deduct from any Trust distributions an amount equal to the Trust's reasonably anticipated liabilities under any such indemnities. The potential amount of such indemnities may be quite high, with the result that substantial Trust proceeds could be withheld from distribution.

The Trustee is also authorized to make express or implied warranties, representations and undertakings for the benefit of a purchaser of the CCAI Stock or CCAI Assets. The Trustee is required to deduct from any Trust distributions an amount equal to the Trust's potential liability under such warranties and representations. In light of

BALCH & BINGHAM

Mr. John H. Vogel
October 2, 1991
Page 5

the above, the Trust Agreement should be changed to restrict the Trustee's discretion to make warranties and representations to those found in similar, commercially reasonable transactions.

(k) **Amendments.** At any time, upon the FRB's prior approval, the Trustee and CCAH may agree to amend the Trust Agreement. The Trust Agreement should be revised to require Sheikh Adham's approval of any amendment. At a minimum, the Trust Agreement should require prior notice to Sheikh Adham of any proposed amendment, and limit amendments, without consent, to those which do not adversely affect the interest of CCAH or its shareholders.

(l) **Disclaimer of Trust Benefits.** Section 7.8 of the Trust Agreement provides that only the parties to the Trust Agreement (that is, CCAH and the Trustee) have any legal or equitable rights, remedies or claims under the Trust. This provision, on its face, could exclude Sheikh Adham and the other shareholders of CCAH from claiming any rights directly under the Trust or the Trust Agreement. For this reason, it should be modified to include CCAH and its shareholders.

(m) **Conflict With Other Agreements.** Section 7.15 of the Trust Agreement provides that if the terms of the Trust Agreement conflict with the terms of any other agreement, the provisions of the Trust Agreement shall control. CCAH should determine that no other contractual agreement prohibits or conflicts with the terms of the Trust Agreement.

If you have any questions about our comments, please telephone me at (205) 226-3469 or Kurt Miller at (205) 226-3429.

Very truly yours,



James F. Hughey, Jr.

JFHjr/rr

cc: Mr. Preston Burton
Mr. Edward M. Rogers

the Nation's nuclear arsenal, and estimates hadn't come out that the U.S. could live with a much smaller defense force. Why not revisit the budget agreement in light of all this, and in light of the fact that the budget deficit is going to be higher than the agreement called for anyway?

The President. I will not revisit it because I want—it's the only cap we have on outrageous congressional spending. It's the only way you control the excesses of spending. It is the only guarantee that the taxpayer has that his interest, to some degree, will be protected.

And if you revisit it in the sense of removing these constraints, the spending gates would open. We've already seen it on some legislation. The unemployment benefits is a good, recent example. Don't worry about budget deficits. Don't worry about those people that are paying the taxes. Just throw on some more spending. And I'm sorry, I don't want to reopen the budget agreement because I think the constraints on spending are helpful.

There have been some things that have broken it. I think the bank problems and some of these have been extraordinary. But if we redo that agreement you're going to see a windfall of spending programs. And it's constraining us in our budgeting, and it constrains Congress in its spending. So, I'm just not going to revisit it.

Q. Well, isn't it a problem, sir, to be constrained like that in terms of trying to deal with new problems that have arisen like the continuing unemployment?

The President. Yes, it's a problem. But it helps you deal with an old problem that has plagued us for years: constraining Federal spending. But sure it is. What President wouldn't like to have a free, open wallet just to give money for every good cause that comes along? A lot of people would like that. There's a lot of problems in this country, some of which would require more money. But there also is a responsibility here to try to hold the line on excessive spending. And that is where the budget agreement comes into effect.

Bank of Credit and Commerce International Investigation

Q. Mr. President, considering your concern about propriety in Government, what

was your reaction when a senior member of your White House staff, Ed Rogers, left the White House employ and signed a contract with a Saudi Sheikh accused of being a key figure in the BCCI scandal?

The President. Well, he is a free citizen to do anything he wants once he leaves the White House. My concern is about the White House itself, that it be beyond any perception of impropriety.

Q. Well, what do you think he was selling to the Saudis except for accessing—

The President. Ask him. I don't know what he's selling. I don't know anything about this man, except I've read bad stuff about him. And I don't like—I don't like what I read about him. But I would suggest that that matter is best dealt with by asking this man what kind of representation he is doing for this Sheikh. But it has nothing to do, in my view, with the White House.

Q. Even though he left here only 3 weeks before and had never had a job in private industry before?

The President. Well, Ann [Ann Compton, ABC News]—

Q. His only job had been working for you.

The President. —suppose you left here and went out into the private sector for some company, and you'd been editing and writing all your life, and you started off—I don't know that it would be the function of the President to suggest what employment somebody should take. If you ask me, would I like to go out there and leave my job and go to work for this Sheikh when I get through being President; no, I wouldn't like to do that. [Laughter]

Tax Cuts

Q. Washington is seeing something of a bidding war this week on tax cuts, started by some of the meetings you had here with Republicans. Has the bidding war ended? Have you been able to shut it down? And the second question is, if any kind of tax cuts can't break the budget deal, doesn't that make it a nonstarter?

The President. Give me the first part again.

Q. Well, have you shut the bidding war down?

The President. Well, I don't think we can shut it down. I think it's understandable

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October 28, 1991

C. Boyden Gray, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Boyden:

Media reports indicate you are conducting an inquiry into my representation of Sheikh Kamal Adham. I welcome this inquiry and will cooperate with it in every possible way.

From the outset, please let me make you aware of the following facts:

1. My law firm and I began our representation of Mr. Adham the first week of September. A copy of my letter of agreement with him, sent via his attorney in the Middle East, is attached hereto and is also a part of my filing with the Justice Department under FARA.
2. While I was at the White House, I had no contact with nor ever heard of Kamal Adham. I did not know the man existed until the last part of August when I was asked to consider representing him.
3. I have had no contact with anyone whatsoever at the White House concerning Mr. Adham or the matters on which I represent him.
4. There have been newspaper reports that Governor Sununu is heading some task force relative to BCCI. If that is correct, I was unaware of it. I understand, however, the Administration has said there is no such task force, and neither Sununu nor the White House have had any role in BCCI-related matters.
5. Prior to agreeing to represent Mr. Adham, I made inquiries about him among former government officials and people in the private sector who have had dealings in Saudi Arabia. Invariably those who knew or knew of Mr. Adham said he was a man of stature and prestige in the region and that he had the

respect of Americans who had dealt with him in the past. Further, I learned during this period that his interests in these matters is adverse to those of BCCI, which was no small consideration in my agreeing to represent him.

6. The representation I have undertaken as part of Mr. Adham's legal defense team does not require registration under FARA. It is express in our letter of agreement the representation does not include lobbying, public relations or political work. Mr. Adham is not a foreign government, a foreign political party or a representative of either. He does not receive income from either a foreign government or a foreign political party.
7. Prior to agreeing to represent Mr. Adham, I reviewed carefully the law and the ethics materials provided me by the Counsel's office as I was leaving my job at the White House. Everything I have done relative to this representation is entirely consistent with and allowed by the law and those materials.
8. While I believe I was not required to register under FARA, I checked with two different private attorneys familiar with the act. Both agreed with my view that the law is so broad and ill-defined that registering just to be on the safe side was a good idea.

I registered out of an abundance of caution. The ethics atmosphere at the Bush White House was to go the extra mile to assure no one could ever say any ethics requirement was violated or avoided. I followed this philosophy and registered, as I did not want anyone to say I should have registered but did not do so. Unfortunately, going beyond the requirements of the law has resulted in an embarrassing spate of stories for my client, the Administration and me.

Since everything I have done in representing Mr. Adham has been and is legal, ethical, and proper, I obviously regret very much this negative publicity and especially the resulting opportunity for some to use it to criticize the Administration.

Please know I look forward to hearing from you or your designees and will cooperate to the fullest extent of the law in any inquiry into this matter.

Sincerely,



Ed Rogers

Memo to Files
From: JMW
Re: Conversation with Ed Rogers
December 18, 1991

1. At JK's suggestion, I contacted Ed Rogers today in lieu of service of subpoena, to see whether we could proceed cooperatively.

2. Rogers called me in response to my telephone message. We talked for about 15 minutes.

3. I advised Rogers that the FRC had authorized a subpoena, but that Senator Kerry had requested that I contact Rogers before service of any subpoena to determine whether we could proceed cooperatively.

4. Rogers advised me that he certainly would prefer that we proceed cooperatively.

5. I advised Rogers that he was free to contact an attorney before talking with us, or not, as he preferred. We agreed to have a preliminary conversation to outline the parameters of the Committee's interest and expected course of action.

6. I specified that we were interested in all of his contacts regarding Kamal Adham, documentation of these contacts, and that ultimately we would need to have him provide this information on the record on a formal basis.

7. He asked whether the Committee had determined to hold public hearings with him as a witness. I said that this decision could not be made yet, and that the possibilities for his providing the Committee information included by way of affidavit, deposition, closed hearing and public hearing. He said he was glad to provide any information to the government, but anxious not to have to do so in public.

8. Rogers then reviewed what he considered to be the critical facts regarding his retention by Adham.

A. While at the White House, Rogers never heard of Adham. Despite press accounts to the contrary, he never knew of any BCCI-related activity undertaken by John Sununu, and no contacts regarding BCCI by the White House in regards to the Justice Department.

B. Soon after Rogers left the White House, Sheikh Adham's attorney, Mussa Raphael, came to the U.S. looking for

replacements for Clifford and Altman. Raphael "bumped into" a "mutual friend" of Rogers, whom Rogers declined to identify other than as a "Middle Easterner with a green card who is a hotel executive."

C. The hotel executive called Rogers and informed him of Raphael's interest in finding a lawyer to represent Adham's overall legal and business interests in the US, to act as a coordinator of Adham's various problems. Rogers was not interested in having anything to do with BCCI, but agreed to meet and talk with Raphael anyway, after he was told that Adham's interests were "adverse to BCCI."

D. Rogers then "checked out Adham with a guy who does business in the Mideast, checked him out with a widely respected former government official, and finally talked to two other former government officials." Each of these contacts urged Rogers to take the account, noting that with his experience he would not be getting offers from non-controversial entities like "Quaker Oats."

E. Rogers understanding was that Plato Cacheris, as a criminal lawyer, did not wish to represent Adham more broadly on investments, businesses, assets, the handling of the Federal Reserve trust, and similar matters. His job was to deal with Adham's commercial problems and to "stay out of Plato's hair," on the criminal problems.

F. Rogers agreed to meet Sheikh Adham and found him to be a sophisticated follower of Western politics. Rogers said he told Adham he could not contact people in government, and could not do criminal law. He could act as a "hub" to help with organization of Adham's affairs in the U.S. As Adham had now fired Clifford and Altman and his London attorneys, he was in need of this kind of liaison in the U.S.

G. Rogers met Adham in Jeddah for two days in early September, and then twice in Cairo. In Cairo, the first meeting was the first organizational meeting of the Sheikh's new legal and accounting team. Because Saudis do not pay income taxes, they do not have annual day of reckonings as we do, and accordingly, their finances are often not well organized. This was true of Adham.

H. The second meeting in Cairo, and his third in all with Adham, was the one in which he shook Eisenberg's hand. Haley Barbour was also there. They both left before the negotiations were complete. They did not participate in any aspect of the negotiations. They were already there as part of the overall lawyer team assembled by Adham, not for the purpose of participating in any form of meeting with any U.S. government official.

I. Rogers stressed that at no time had he ever discussed Adham with any US government official, except in the course of inquiries by the White House and the Congress in the wake of the press accounts of his representation, in which he responded to questions.

J. Rogers had accepted a two year contract with Adham for the purpose of acting as Adham's US coordinator, and filed the foreign agents registration act because of advise from attorneys that in the current environment involving BCCI, almost any activity other than litigation could be viewed as bordering on political.

9. I suggested to Rogers that he contact his attorney and that he or his lawyer should call me by January 3 for a followup informal meeting before we decided whether to proceed by way of deposition. I told Rogers that he would have to provide us with all material documents concerning Adham, and that it was our view that the Attorney-Client privilege did not pertain to dealings with the US Congress, and that I could provide him with legal memoranda to that effect.

10. Rogers agreed to contact me by January 3 and I told him that if he did not I would contact him. I told him that I would endeavor to have Senator Brown's staff participate in our debriefings with him.

11. He emphasized again that he wished to keep this from the public. I emphasized that one way or another a public record would have to be created, but that the Subcommittee had not yet decided precisely what method was necessary.

12. I further emphasized that he would have to provide us with the names of all the persons he contacted in the course of Adham's decision to retain him, and that he would not be able to withhold those names from us.

13. The conversation was cordial. Rogers stated repeatedly that he believed both branches of government had the right to know what he had done, but did not feel that way about the press. He referred to his decision to represent Adham as a mistake.

BCCI a victim of operation overkill by West, says Adham
01/18/92

MIDDLE EAST NEWS NETWORK (MENN)

Arab News

(Copyright 1992)

Although the approval of liquidation proceedings in London, Caymans and Luxembourg has ended the contentious saga of Bank of Credit and Commerce International, it will nevertheless go down in banking history as one of the most controversial financial institutions. To its detractors, BCCI has been guilty of large-scale fraud, money laundering and scores of unethical banking

practices. But the guilty verdict against the bank and the men running it in the past few years of post-Abadi era has in no way diminished BCCI's achievements as pioneers in Third World banking or the ideals behind its founding. Its meteoric rise in a span of less than three decades from a \$2.5 million bank to a \$20 billion giant, its competitive edge and a complete range of services, including cash on holidays for customers, had indeed earned it the envy of banking Goliaths who lacked the flexibility to plug the gap institution was utilizing to its advantage. True, the BCCI made mistakes in extending loans to people without collateral or succumbing to the lure of money laundering, but such mistakes have been made again and again by the banks which came before or will come after BCCI. In their operation overkill to close BCCI, Western monetary authorities have left so many loose ends that a theory of conspiracy will always look plausible as new facts about the case come to light. Saudi businessman Kamal Adham has been maligned by international media for banking with BCCI and investing in a U.S. bank along with other BCCI shareholders. A man known to shun publicity, Adham has avoided press comments on the issue. But in a rare interview conducted in Cairo Jan. 5 by Caravan, Adham breaks his long media silence, speaking about the weaknesses and strengths of BCCI and the behind-the-scene negotiations and events that led to closure of the bank in 69 countries.

The following are excerpts of his comments:

"I am a victim of BCCI just as much as anybody else. This bank, as it is, is not any bank. It is a bank that owns 69 banks around the world in 69 countries. It started in 1972, and in 20 years' time a bank with a capital of \$2.5 million became a \$20 billion bank. This is not very much appreciated by the big powers who were somehow like the guardians to the younger students in a school. They always in the past used to monitor what the Third World used to do.

For example, if you want to buy arms, they know exactly how the deal is made. If you want to make a venture in atomic energy, which they don't want anybody to do, they monitored all that. Suddenly, a new vehicle appeared on the scene which belonged to the Third World, and this vehicle was spreading so fast that it had branches all over the world. This somehow made them feel that the Third World, instead of using the vehicle they usually assign us to use, have their own vehicle now so the money that came from the oil business went to this vehicle instead of the banks of the Western World.

"But there is a price to pay for that. Although this bank with its 69 branches is a good thing to have, it can create problems when you expand fast. Expansion, if you go back to history, has caused empires to collapse because the central government is unable to monitor what is going on in the remote regions.

"This is what happened in the bank. The management in England was not an international outfit. It was mostly Arabs and Pakistanis who were running the show, and they were not up to the standard of being international.

"The result was that many mistakes in small branches were covered up rather than corrected, since the local outfits wanted to make the bank look better than it was.

"Mistakes were made like overextending loans to people without

collateral in a country where names are more important than collateral. For example, if they extend loans to the ruler of Bahrain or of Ajman, it is difficult to ask for collateral because they are also like us. The Pakistanis, say, 'How can I ask this ruler for collateral when he is a man of honor and he will pay back?' In many cases, they do, but they fall sometimes in the hands of wrong people.

"This also happened here. When they first started here, they gave loans to companies that on the face of it seemed very strong but in the end they failed because there was no collateral, and this happened in many other places. Because of the fact that the 69

banks around the world were run by a group in London, it was extremely difficult for them to control the situation. So they relied totally on the monitoring by their auditors, who were fooled sometimes. In some cases, the auditors are the people to blame because they did not warn the owners of the bank and the shareholders that there was a serious problem, that there was overexpansion and that there was not enough liquidity to cope with any crisis.

"What they used to do when there was a crisis in some small bank in Asia or in Africa, they used to get money from a bank that was doing well somewhere else and cover that crisis at that stage and, when everything was all right at that stage, they would move back the funds, just to cover up so that the organization doesn't collapse. To avoid collapsing, they needed capital and they had more investors from all over the place.

"All this is concerning BCCI, but my role in America is a different matter. In 1980, I was told there was a good opportunity for investment in a bank in America called the Financial General Bank Shares. This is an investment company that owns a bank in Washington and has the right to own banks in five or six other

states, which is a rare privilege. In America they do not usually allow that, even the very well-known banks like Chase Manhattan and First National Citibank, they have bases in only one state; they cannot operate in other states.

"So, when I was told of this opportunity, I called my banker, the head of BCCI and told him to see if this was a good opportunity. After studying it for two months, he came back and told me that this was a 'very good opportunity and this was a very good bank, and not only I encourage you to go ahead, there are many others who want to participate in this.' I told him to give me a name. You know, when you go into a venture, you want to know who are with you and the names were very prominent -- Sheikh Zayed (of Abu Dhabi) and the rest of the Emirates group. So I said this is very encouraging and let's go ahead.

"Not knowing the American law properly, apparently we exceeded in buying shares to the extent we had to bid for the whole bank, and suddenly we were told that you either sell your shares at short notice or you buy the entire bank. I couldn't do that myself, so we met with the representatives of the other shareholders and they said let's have a go at it, it's a promising deal and we want to

buy this bank.

"Again we made other mistakes, such as, when you buy assets of a bank, you cannot borrow all the money from other banks, but you must have your own money, according to American law. However, the

purchase was made and there were no problems and this bank from 1982 to 1990 jumped from a \$2 billion bank to an \$11 billion one.

"The thing is that they thought that buying this bank is politically motivated. This bank is in Washington and it has many other banks around the states. When we bought this bank, we did not realize that this bank owns 90 percent of a bank in New York in which all the depositors are Jewish, all of them. It was a big crisis in New York. How can the Arabs buy a bank whose depositors are all Jewish? We had a big fight in courts and so on to stop the deal, but in the end we reached a compromise, as they always do in America -- they reach a compromise -- and the compromise was that we sell the bank to some New York people and they give us a license to own another bank, so we did that and issue was solved.

"At the time of purchase of the bank, the Federal Reserve told us to make sure that this bank is properly run and that there is no interference from outside, since it is in a delicate position,

being in the capital. And many of the depositors who are senators and congressmen said we will agree to this deal if no one of the shareholders is on the board of directors and for the first five years you give the majority share in the form of proxy to a man they appointed to represent us in voting for 60 percent -- and that every year, the stability of the bank is more important than dividends and for 10 years we did not touch that money; it was reinvested for development in the bank.

"We were pleased, for the management was purely American and we did not interfere in any way and that way proved to the Americans that all we were interested in was business and this was a good opportunity.

"But the opposition started accusing that this is not a bank for business and that they are after the senators and this Kamal Adham has an intelligence background and he cannot be here for making money because he is not. How can the investors accept no profit for 10 years, give the proxy to an American and not interfere at all in the bank and expect us to believe they are here to make money? So they have another motive. So what can we do to get rid of these people?

"They went back to the old papers trying to find mistakes and they found instances where people said they were going to do things and never did. But the biggest opportunity came when the BCCI branch in Florida was trapped by a scam made by the FBI, who presented themselves as businessmen and talked to a small employee in the bank and told him that we have this money and we would like to put it in the bank, and they insinuated that this money was coming from South America and they tried to make him believe that it was drug money.

"This poor fellow fell in the trap because he felt he was doing something good to the bank but in actual fact he was playing this role for the FBI. When this happened, the people who were objecting to the purchase of the First American in Washington said these people are dealing in drug money, because it was the head of BCCI that was representing all these Gulf rulers in the purchase because he is their banker. They said there was a connection and that all these people who have purchased the First American are actually BCCI front men.

"It was a bit difficult for many people to believe that people like Sheikh Zayed or Kamal Adham or Ghaith Pharaon, who are wealthy

people in their own right, agree to be front men for the bank. The problem was there was an overlapping situation -- we were shareholders in BCCI and owners of the bank -- and if some one had it in their mind to see a connection, they will. First, what they did was that they launched an investigation and found in the entire bank, that is worth \$20 billion, \$34 million of questionable source. There is \$250 billion of drug money in the market and in the banks, and when out of this only \$34 million are in a bank, it is a joke, since there are 26 American banks, including the biggest banks in the U.S., and the least-holding of these banks are five times more than \$34 million.

"What the Justice Department did was give them a fine of \$500,000 and a letter saying that they must improve their banking system and this thing should not happen again. What they did in the BCCI branch was that they gave them a fine of \$14 million and they confiscated the \$34 million. This is the severest punishment ever. But it is not that; the thing is that they managed to make a deal with the branch. The management, with the sudden collapse in Abedi's (bank founder, Agha Hasan Abedi) health, did not want problem, so they agreed to the deal that they admit that they

laundered money for drugs.

"It is like the reputation of a young girl, and when she is said to be fooling around, her reputation is ruined. So when a bank admits to dealing in drug money, its reputation is also ruined. After that, there was supposed to be no further investigation. But the next day, the governor of Florida cancelled the license of the bank because it was dealing with drug money!

"It's a chain reaction, when these people want to ruin anything, they can. The aim is to destroy the bank. The order was as follows: the DA (district attorney) of Florida thought that there is more in this operation and that after making the deal, he did not close the matter, but sent the case to a friend who is for them a very important man, Mr. Morgenthau (Manhattan district attorney Robert Morgenthau), and told him to follow the matter up in spite of the deal. So they all decided to follow up this matter and in coordination with others in England who wanted to pursue the matter.

"What they did was they got some people to invest in the bank in New York and then, after a few days, they told them, could we transfer the money to the branch in London and then the branch in Paris and then in Switzerland and then in Nairobi, then back to New

York again; they made a route and it was all the same amount being transferred from branch to branch.

"The fact that one of these people was related to the Florida operation, they said that these people have clearly demonstrated how money-laundering takes place, and how it is washed abroad and coming back to the States. The management of the bank panicked and their head could not fight back.

"Abedi was not there and every day the bank was mentioned in the papers, so the people started suspecting the bank, got scared and started withdrawing their money. This needed immediate intervention. So they took Abedi as he is, on a wheel chair, to Sheikh Zayed and told him that the man is here and he wants to talk to you. As an honorable man, Zayed said, "I'll back the bank, what is the problem?" So they told him the problem is that the bank is under pressure and it needs financial support.

"He got advice from a man of the Bank of England what to do with the bank. So they all got together and made up a plan to save the bank. The plan was very realistic. They wanted to divide the bank into three zones, one to handle Africa, one to handle Asia and one to handle Europe and the U.S. All this was backed financially in

two ways: preparing an infusion of \$1.2 billion in case the bank has any problems and four promissory notes of \$1 billion each, in case something else happens. And they all agreed to this and went to Luxembourg, which is the head of the bank, and the representative of the Bank of England was called.

"They all heard this plan and they all agreed and shook hands and this was on a Wednesday. The representative of Abu Dhabi said I am going back tomorrow and Friday is a holiday and Saturday and Sunday are a holiday in Europe so we will announce our plan on Monday, which would have pacified everybody, and a new system of running would have been established.

"On Friday, the Bank of England declared that the bank is out of operation. It is clear to us that this was part of a conspiracy to get rid of these 69 banks around the world. It was clear from the time when most of the governors of the central banks of the world received calls from the Bank of England, saying let's do this together. This is the biggest fraud on earth. Let us get rid of this octopus and kill it. And so the bank was stopped from operation and I am a victim.

"As for the American case, this is what bothers me most since I am a minor shareholder in BCCI, but I happen to be by accident the leading shareholder in the First American. For a simple reason -- because none of the leaders (shareholders) were ready to go -- they are all rulers and they said who is to be the leader of the Arab group -- they said it was me, because I spoke English and I had the courage to go to America to talk on behalf of the shareholders, so every word I said during the talks was brought back to see if I made a mistake.

"All we are trying to do now is to justify certain things we have said in the past and to support some of the points we have by documents that the money is ours and that we are here for business.

"Finally, I feel confident that there is nothing on my part that worries me.

"I wanted you to look at it from the Third World point of view. The Third World would feel that this is a disaster that they lost this opportunity, this vehicle that had so many banks around the world, and this will never be repeated. If you look around in the banking world you will see that most of the Arab banking organizations with international branches are being hit one after the other and it cannot appear to be coincidental.

"I believe some of it is intentionally done because the new order does not allow anyone to have his own vehicles and to do with it as he wants. There are so many things that were done through the bank that are regarded by the Third World as an achievement, like funding the Pakistani atomic energy program.

"To the world this is a dangerous game the young people are playing and they are not part of the club but for the Pakistanis, the one that helped them is a hero since India has an atomic bomb, so why can't Pakistan? This is the only way it can defend itself. There is a lot of prejudice.

"You know that the day BCCI was closed in London, 138 small business owned by Asians were closed in London because most of them are Pakistanis who have the accounts in BCCI. And this way they got rid of them because they were complaining of the presence of these shops that open on Sunday and Saturday. At night if you want to buy anything they are open, and this was called unfair competition.

"You know, a banker in England told me that BCCI is not a bank because the way they are operating is an unfair competition. This bank looks after its clients by doing almost everything for them. They send people to pick them up at the airport. They rent flats

for them. They get servants for them. They assign the shop across the road to buy its goods from them and give business to the tourist agencies owned by Pakistanis and, furthermore, they have money available to their clients even on Sunday, which is something that is not done in England. And you have a branch of BCCI in every street in London, which is something that is also not done. And they don't employ many non-Pakistanis, and if you go to their branch in England, you will not find a single Englishman, so they don't think that this kind of organization is acceptable to their society, while the Arabs and Asian customer is used to these things.

"When he wants money, he doesn't go to the bank; the bank sends the money to him. Even on a Sunday, when his wife wants to go shopping early the next day, he gets the money that evening. These are services that are not done by the Western banks -- it's a gap of culture that is not understood.

"But apart from that there were so many mistakes that were made, like quick expansion and the inability to monitor everything. Like I told you from the beginning, this is like an empire whose central government could not control the smaller regions. And when the founder and the man who really was in charge of the bank

disappears, those beneath him were unable to cope with the situation.

"Anyway, what I wish is that if we ever have a chance to have an organization like this one day in the future, which I doubt very much, then we should be better equipped to be international, because so far we are not equipped.

"There is no balance in the world anymore; only one side is running the show. We fight within what is available to us; district attorneys and the congress and statesmen left and right, it is very difficult.

"Now things are cooling down as we don't know what will happen with this new solution; it's a good solution, but in America, this is part of the American system, they plea-bargain, they make a deal. Making a deal involves an agreement with somebody who admits to certain things, even though they did not do them just so that they end this problem by fines or whatever.

"And in cases where they make a deal there are accusations that are not cleared and they come back to that one day. They made a deal for a certain purpose, and they should, while making the deal, clear the accusations."

In response to a question about an alleged derogatory comment about Adham made by President George Bush, who once headed the U.S. Central Intelligence Agency, Adham said:

"No, there was a period of overlap, but whatever the case, it is not possible for a president to say that. The next day, nobody mentioned the White House spokesman came out and said that the president knows Mr. Adham and he did not like what was written in

the papers. But nobody wrote this. This is not news for the papers, they only want bad news."

Asked whether there was any legal action taken against Time magazine, he said:

"No, no legal action was taken against the Time article."

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United States Senate
 COMMITTEE ON FOREIGN RELATIONS
 WASHINGTON, DC 20510-6225

April 16, 1992

C. Boyden Gray, Esq.
 Counsel to the President
 The White House
 Washington, D.C. 20500

Dear Mr. Gray:

As you may know the Subcommittee on Narcotics and Terrorism, which I chair, has been investigating the Bank of Credit and Commerce for over three years.

Recently, in the course of the investigation, my staff deposed Mr. Ed Rogers, the former Assistant Chief of Staff and Political Director at the White House. As you know, Mr. Rogers, after he left the White House, had a contractual relationship with Kamal Adham, a central figure in the BCCI scandal.

Mr. Rogers provided my staff with a copy of a letter that he wrote to you on October 28, 1991. During the deposition with my staff, however, Mr. Rogers made certain assertions that were inconsistent with statements of fact made in his October letter to you. These assertions were also inconsistent with prior statements made to a member of my staff and inconsistent with information provided to my staff by individuals whom Mr. Rogers contacted.

It is my understanding that your office conducted an investigation of Mr. Rogers, which consisted solely of telephone communications with him, without the production or review of any documents, or contact with any other person with information material to Mr. Rogers' activities. Additionally, Mr. Rogers informed my staff that he had previously worked with the individuals who conducted the investigation.

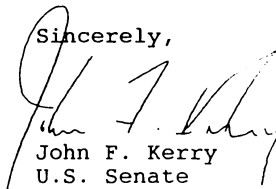
It has been reported that based on an internal report created by your staff, you concluded that he had violated no law.

Page Two

In light of the discrepancies which have appeared in Mr. Rogers' various statements regarding his involvement with Mr. Adham, I am requesting that you provide my office with a copy of your report in order that we may better evaluate the inconsistencies. The Subcommittee is prepared to make any necessary arrangements for holding the report in a confidential manner.

Thank you for your cooperation in this matter. Should you have any questions, please don't hesitate to call either David McKean or Jonathan Winer of my staff.

Sincerely,

A handwritten signature in dark ink, appearing to read "John F. Kerry". The signature is fluid and cursive, with a large initial "J" and "K".

John F. Kerry
U.S. Senate

JFK/dm

1011

JOHN KERRY
MASSACHUSETTS

United States Senate
WASHINGTON, DC 20510

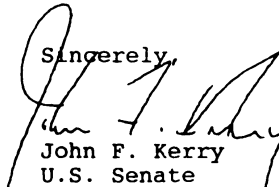
May 20, 1992

C. Boyden Gray, Esq.
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Gray:

On April 16, the Subcommittee on Narcotics and Terrorism sent you a letter requesting a copy of your office's investigative report regarding Mr. Ed Roger's contractual relationship with Kamal Adham. To date, the Subcommittee has received no reply from your office and wishes to renew its request. A copy of the original letter is enclosed.

To facilitate the Subcommittee's inquiry, please respond by June 1. Thank you for your cooperation.

Sincerely,

John F. Kerry
U.S. Senate

JFK/dm/kw

THE WHITE HOUSE
WASHINGTON

May 29, 1992

Dear Senator Kerry:

This letter responds to your letters to me dated April 16 and May 20, 1992 requesting a copy of a report of an investigation you understand was conducted by my office regarding Mr. Ed Rogers' contractual relationship with Kamal Adham, in connection with an ongoing investigation of the Bank of Credit and Commerce International (BCCI) being conducted by the Subcommittee on Narcotics and Terrorism of the Senate Committee on Foreign Relations. Your April 16 letter also states your understanding that our investigation "consisted solely of telephone communications with [Mr. Rogers,] without the production or review of any documents, or contact with any other person with information material to Mr. Rogers' activities." Although I do not know the basis for your understanding, it is seriously misinformed.

As I explained in a November 1, 1991 letter to Representative Schumer, a copy of which is enclosed with this response, our office reviewed the information regarding BCCI that Mr. Rogers may have had access to while at the White House. Our review found that "Mr. Rogers did not have access to any sensitive information concerning any government investigation of BCCI." Further, we determined that "Mr. Rogers was not responsible for and did not participate in any matters concerning BCCI at the White House[.]"

We also reviewed Mr. Rogers' communications with White House officials and employees since he left the White House on August 6, 1991. As the letter to Representative Schumer stated:

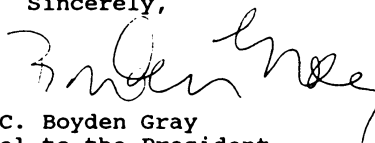
[W]e queried Governor Sununu, his entire staff, a former member of his staff, and other senior White House officials whose responsibilities suggested to us that they might be potential recipients of such a communication. We also reviewed all phone logs maintained by these officials for the period since Mr. Rogers left the White House. Our review discloses no evidence that Mr. Rogers made any communication to anyone in the White House concerning BCCI.

We thus found no basis to conclude that Mr. Rogers' representation of Kamal Adham implicated any post-employment restriction.

1013

I trust this letter satisfactorily responds to your request.

Sincerely,

A handwritten signature in dark ink, appearing to read "C. Boyden Gray". The signature is fluid and cursive, with the first name "C." being more prominent and the last name "Gray" written in a more connected, flowing style.

C. Boyden Gray
Counsel to the President

Enclosure

Honorable John F. Kerry
United States Senate
Washington, D.C. 20510

THE WHITE HOUSE
WASHINGTON

November 1, 1991

Dear Mr. Schumer:

This is in response to your letter to the President of October 23, 1991, regarding former Deputy Assistant to the President Edward M. Rogers and the Bank of Commerce and Credit International ("BCCI"). I am responding to those questions that relate to the White House. I understand that the Department of Justice is responding to those questions in your letter which concern its ongoing investigation of BCCI.

Your letter raises two questions concerning Mr. Rogers' conduct which the White House is able to address.

First, you have asked whether Mr. Rogers may have had access to sensitive information about the government's investigation of BCCI as well as the investigations of BCCI by your panel, the Subcommittee on Crime and Criminal Justice, and Senator Kerry's Foreign Relations subcommittee. We have conducted a review of the information regarding BCCI that Mr. Rogers may have had access to while at the White House. This review indicates that Mr. Rogers did not have access to any sensitive information concerning any government investigation of BCCI.

In addition, we have determined that Mr. Rogers was not responsible for and did not participate in any effort to watch or monitor any investigation concerning BCCI. As Counsel to the President, my office is the only authorized channel of contact with the Department of Justice regarding ongoing investigations. Contrary to the reports mentioned in your letter, neither the Chief of Staff nor any member of his office made any contact with the Department of Justice, or participated in any ongoing effort to monitor BCCI-related matters. There is no formal or informal group in the White House involved in, or monitoring, the BCCI investigation.

Second, you have raised a question about whether Mr. Rogers may have violated the post-employment provisions of the Ethics in Government Act of 1978 (as amended by the Ethics Reform Act of 1989) in connection with any work he may have performed on BCCI matters. Since he was not responsible for and did not participate in any matters concerning BCCI at the White House, the two-year ban and the life-time ban on representing parties before the government are simply inapplicable.

We have also reviewed Mr. Rogers' communications with White House officials and employees since he left government service on

August 6, 1991. In this regard, we queried Governor Sununu, his entire staff, a former member of his staff, and other senior White House officials whose responsibilities suggested to us that they might be potential recipients of such a communication. We also reviewed all phone logs maintained by these officials for the period since Mr. Rogers left the White House. Our review discloses no evidence that Mr. Rogers made any communication to anyone in the White House concerning BCCI. Additionally, in a letter to me dated October 28, 1991, and a public statement, Mr. Rogers himself has categorically denied making any communications to anyone at the White House regarding his former client or the matters upon which he represented him. Accordingly, we have found no basis to conclude that the one-year ban applicable to former senior employees like Mr. Rogers would be implicated as you have suggested.

I trust that this response will resolve the concerns expressed in your letter.

Sincerely,



C. Boyden Gray
Counsel to the President

The Honorable Charles E. Schumer
House of Representatives
Washington, D.C. 20515

B.C.C.I. and Sununu

WASHINGTON

On July 23, acting on a tip from an informant familiar with the political reach of B.C.C.I., I posed this question to White House counsel Boyden Gray: Did John Sununu have any dealings with B.C.C.I. or its subsidiaries?

Mr. Gray checked and called back promptly: "No. A flat denial." Accordingly, I wrote nothing; an unequivocal denial relayed through the President's attorney squelches a rumor.

However, we now know from Newhouse Newspapers that at about that time, Ed Rogers — Mr. Sununu's right-hand man, political protégé and personal press agent — was in the process of being hired by Sheik Kamal Adham, the former chief of Saudi intelligence suspected of being at the heart of the biggest swindle in history.

This same Sununu hady helped organize the meeting on May 23 that founded the Arab American Council, an oil-backed elite lobbying group that scorns broader-based Arab-American organizations. Mr. Sununu and the Syrian Ambassador were stars of the gathering; out of Lebanese contacts made there or later, I presume, came Mr. Rogers's huge contract.

Here is a 33-year-old Bush political hatchet man, a 1985 graduate of the Alabama Law School who never practiced law a day in his life, retained by an accused criminal mastermind at the rate of \$25,000 per month for two years. Plus expenses, which will be considerable. Plus, logic suggests, the ability to pass other fat fees on to influentials he designates.

The \$600,000 initial payment from Sheik Kamal could be, as Mr. Rogers insists on his foreign agents registration form, for his legal expertise as well as for "duties that could border on political." Mean-spirited types like me suspect that it may be for access to intermediaries who speak to Mr. Sununu and to other Bush appointees beholden to the chief of staff, thereby circumventing the ethics law.

Something fishy is behind this Government's reluctance to prosecute aggressively the well-connected predators of B.C.C.I. Mr. Rogers claimed last summer that his boss was being criticized only because he was of Lebanese extraction; now that the connection has been revealed between B.C.C.I. and Sununu's Alabama right arm, that excuse won't fly.

At first, President Bush said of Sununu's aide: "he is a free citizen to do anything he wants once he leaves the White House." Wrong; we have a law against revolving-door lobbying. Then

Bush aides concocted a story that Mr. Bush fired Ed Rogers, and that Mr. Sununu never talked to his right-hand man about this out-sleazying of Mike Deaver; that's Tooth Fairy stuff.

The new Attorney General, who was present at Justice's sustained foot-dragging in B.C.C.I. and the Bank of Lavoro rip-offs, promptly labeled the concern that John Sununu or anyone might have influenced the B.C.C.I. probe "utter nonsense"; that prejudgment removes Justice from any investigation of the Sununu connection.

The final White House ploy to avert

Time for a special prosecutor.

a close look at possible influence-peddling came when Mr. Bush directed his counsel, Boyden Gray, to inquire into it. I have seen the extent of such an "inquiry"; Mr. Gray will pass along the denials and the White House whitewash will continue.

Did the C.I.A. obstruct the investigation of one of its banking assets? Why did James Baker's Treasury Department fail to act on a C.I.A. tip about B.C.C.I. drug-money laundering? Who in Washington tipped the druglords to a related crackdown, enabling them to withdraw their money first? Who else at or near the top took B.C.C.I. largesse?

The White House and Justice Department cannot investigate themselves; this latest affront tips the scales to a special prosecutor. Senate Judiciary Committee Chairman Joe Biden could trigger this process today.

Step One is to subpoena Mr. Sununu's phone logs and schedules, and to get him under oath on his easy denials. Step Two is to do the same with Attorneys General Thornburgh and Barr and their criminal division chiefs and at least three misfeasant U.S. Attorneys. Then grill Ed Rogers and his intermediaries.

If you have information about manipulation of our prosecutors, do not contact posterior-covering Justice or its F.B.I. subsidiary; send your evidence to the uncorrupted Manhattan District Attorney, or to Senator John Kerry, or to Representative Charles Schumer. They'll pass it to the special prosecutor so urgently needed. □

Sununu-Whitewash

WASHINGTON

Relax, everybody — the White House counsel has "investigated" the case of the departing Sununu aide with no legal experience who was hired for \$600,000 by a B.C.C.I. figure, and rendered this verdict: Nobody did anything wrong.

Influence peddling? An attempt by intermediaries to obstruct justice? Forget it. Sununu's man agrees to give back the money; case closed.

— Much relieved, the Republican Justice Department hastily announces it accepts the predetermined result of the White House "inquiry" and will not investigate. To date, nobody has been asked a single question under oath.

Let's see what Sheik Kamal Adham, the ex-Saudi spymaster at the center of the huge B.C.C.I. conspiracy, thought he would get by hiring the person closest to Mr. Bush's chief of staff.

Since late spring, Plato Cacheris, Sheik Kamal's legitimate criminal defense lawyer, has been trying to get various prosecutors to move the mountain to his client — that is, to come to a place of the sheik's choosing, where he cannot be arrested and extradited, to listen to an unsworn proffer of evidence that will deflect prosecution from him.

Nothing doing, said Manhattan D.A. Robert Morgenthau, the only lawman getting real results in the B.C.C.I. swindle; bring him in — we'll get his story in front of a grand jury. Nor, for over three months, was the U.S. Attorney in Washington inclined to kowtow to this witness or subject or target.

— Then Mr. Sununu's right-hand man

throughout the Federal Government, play a part in reversing the Justice decision? Nobody wants to know.

The White House counsel has found a loophole in the Ethics Act enabling him to place George Bush's ethical imprimatur on this sleazy deal: Mr. Rogers did not work on B.C.C.I. matters before leaving the White House. From the point of view of Sheik Kamal, that immunity from Ethics Act reach is what made the Sununu aide especially valuable.

Mr. Bush's counsel, in dismissing the case, notes virtuously that "our review discloses no evidence that Mr. Rogers made any communication to anyone in the White House concerning B.C.C.I." What about "Sununu people" placed in State, Treasury and regulatory agencies outside the act's limited purview? What about intermediaries who carry messages to the White House? Nobody wants to know.

Look: the pattern of the B.C.C.I. swindlers for a decade has been to buy high-level influence, to seek to avert prosecution and obstruct justice, to offer bribes. It worked around the world; why shouldn't B.C.C.I. fixers try it on the Bush White House?

The White House self-inquiry, as predicted here a week ago, was a sham; its avid embrace by Criminal Division chief Robert Mueller is typical of Justice's inexplicable ineptness in the face of a vast criminal conspiracy. Dick Thornburgh bobbled his Pennsylvania race partly because of his B.C.C.I. failure.

Because nobody has held out a bundle of cash and bluntly said "obstruct justice," the complaisant Mr. Mueller will not ask anybody embarrassing questions under oath. When it comes to modern global corruption — legal fees, slick deals, intermediaries, cooperation with intelligence cut-outs for protection — this passive Thornburgh product just doesn't get it.

Returning the money does not wash away the deed. We have here a blatant, unmistakable reach for influence inside the Bush White House. Who were the brokers, the go-betweens, in the Middle East, in Paris and in Washington who told Sheik Kamal which Bush aide to hire and what to ask for? White House aides past and present know some of them and should be required to help prosecutors get a fix on would-be fixers.

Last week the Justice Department again demonstrated its paralysis on B.C.C.I. The cover-up is on; only a special prosecutor unconcerned with political fallout can stop it. □

Surprise! Aide 'innocent.'

departs the White House and is immediately retained, reportedly — paid \$136,000 in advance. Justice suddenly has a change of heart; though Mr. Rogers's hand doesn't show, David Eisenberg, an assistant U.S. Attorney, is dispatched from Washington to Cairo to meet Sheik Kamal on the sheik's terms. Lo and behold, Ed Rogers of Cairo and Washington sticks out his hand, shakes Mr. Eisenberg's, then discreetly withdraws. (He's probably earned his fee; pity he has to return it.) Did the longtime Sununu hatchet man, who has placed his political allies